P.V. 136

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Sup. Ct

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 780a)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 444

FLORENCE B. BIGELOW, MARION B. KOERBER, JOHN E. BLOOM AND WILLIAM C. BLOOM, PETITIONERS,

vs.

RKO RADIO PICTURES, INC., LOEW'S, INCORPORATED, TWENTIETH CENTURY-FOX FILM CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 21, 1945.

CERTIORARI GRANTED NOVEMBER 5, 1945.

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TRANSCRIPT OF RECORD

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

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FLORENCE BIGELOW, ET AL.,
Petitioners,

vs.

RKO RADIO PICTURES, INC., A CORPORATION, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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In the

United States Circuit Court of Appeals

For the Seventh Circuit

No. 8716

FLORENCE B. BIGELOW, MARION B. KOERBER, JOHN E. BLOOM AND WILLIAM C. BLOOM,

Plaintiffs-Appellees,

vs.

RKO RADIO PICTURES, INC., A CORPORATION, LOEW'S, INCOBPORATED, A CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, A CORPORATION, PARAMOUNT PICTURES, INC., A CORPORATION, BALABAN & KATZ CORPORATION, A CORPORATION, VITAGRAPH, INC., A CORPORATION, WARNER BROS. PICTURES, INC., A CORPORATION, WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, A CORPORATION, AND WARNER BROS. THEATRES, INC., A CORPORATION,

Defendants-Appellants.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

THE BLAKELY PRINTING COMPANY, 350 WEST MADISON, CHICAGO

TRANSCRIPT OF RECORD FILED NOV. 14, 1944.

PRINTED RECORD.

In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8716

FLORENCE B. BIGELOW, MARION B. KOERBER, JOHN E. BLOOM AND WILLIAM C. BLOOM,

Plaintiffs-Appellees,

vs.

RKO RADIO PICTURES, INC., A CORPORATION, LOEW'S, INCORPORATED, A CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, A CORPORATION, PARAMOUNT PICTURES, INC., A CORPORATION, BALABAN & KATZ CORPORATION, A CORPORATION, VITAGRAPH, INC., A CORPORATION, WARNER BROS. PICTURES, INC., A CORPORATION, WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, A CORPORATION, AND WARNER BROS. THEATRES, INC., A CORPORATION,

Defendants-Appellants.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday in March (it being the 6th day thereof) in the year of our Lord One Thousand and Nine Hundred and Forty-four and of the Independence of the United States of America the 168th Year.

Present:

Hon. John P. Barnes, District Judge.
Hon. William H. Holly, District Judge.
Hon. Philip L. Sullivan, District Judge.
Hon. Michael L. Igoe, District Judge.
Hon. William J. Campbell, District Judge.
Roy H. Johnson, Clerk.
William H. McDonnell, Esquire, Marshal.

Tuesday, March 14, 1944.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

2 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of May (it being the 1st day thereof) in the year of our Lord One Thousand Nine Hundred and Forty-four and of the Independence of the United States of America the 168th year.

Present:

Hon. John P. Barnes, District Judge.
Hon. Philip L. Sullivan, District Judge.
Hon. Michael L. Igoe, District Judge.
Hon. William J. Campbell, District Judge.
Hon. Walter J. LaBuy, District Judge.
Hon. Elwyn R. Shaw, District Judge.
Hon. William H. Holly, District Judge.
Roy H. Johnson, Clerk.
William H. McDonnell, Marshall.

Thursday, June 1, 1944.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

3 IN THE DISTRICT COURT OF THE UNITED STATES

Northern District of Illinois,

Eastern Division.

Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom,
Plaintiffs.

vs.

RKO Radio Pictures, Inc., a corporation, Loew's, Incorporated, a corporation, Paramount Pictures, Inc., a corporation, Twentieth Century-Fox Film Corporation, a corporation, Vitagraph Inc., a corporation, Balaban & Katz Corporation, a corporation, Warner Bros. Pictures, Inc., a corporation, Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation,
Defendants.

No. 4525.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Complaint in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the twenty-eighth day of July, A. D. 1942.

4 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

COMPLAINT AND JURY DEMAND.

(Filed July 28, 1942, Hoyt King, Clerk.)

Thomas C. McConnell,
Attorney for Plaintiffs.
135 South La Salle St., Chicago.
Andover 5520.

Judge Igoe—General Calendar No. 1.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

COMPLAINT.

Now come Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom, plaintiffs herein, and present their complaint against Loew's, Inc., a Delaware corporation, Paramount Pictures, Inc., a New York corporation, RKO Radio Pictures, Inc., a Delaware corporation, Twentieth Century-Fox Film Corporation, a New York corporation, Vitagraph, Inc., a New York corporation, Balaban & Katz Corporation, a Delaware corporation, Warner Bros. Pictures, Inc., a Delaware corporation, Warner Bros. Circuit Management Corporation, a Delaware corporation and Warner Bros. Theatres, Inc., a Delaware corporation, defendants herein, and for cause of complaint, show:

1. That the plaintiffs, Florence B. Bigelow, John E. Bloom and William C. Bloom, are each residents of the City of Chicago and citizens of the State of Illinois, and that the plaintiff, Marion B. Koerber, is a resident of the City of Fort Wayne and a citizen of the State of Indiana, and that each plaintiff is the owner of a one-fourth undivided interest in certain property held in land trust No. 11329 by the Livestock National Bank, a corporation of Chicago, Illinois, which said property is legally described, as follows:

Lot One (1) in Block Four (4) in South Jackson Park Subdivision of the North West Quarter (NW¼) of the South West Quarter (SW¼) of Section Twenty-four (24), Township Thirty-eight (38) North, Range Fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois,

and that located on said property and part and parcel thereof there is a motion picture theatre with a seating capacity of 1,458 seats, known as the Jackson Park Theatre, which said theatre is owned and operated by the plaintiffs as co-partners.

2. That the defendants are incorporated under the laws of the following respective states, to-wit: Loew's, Incorporated, in the State of Delaware; Paramount Pictures, Inc., in the State of New York; RKO Radio Pictures,

Inc., in the State of Delaware; Twentieth Century-Fox Film Corporation in the State of New York; Vitagraph, Inc., in the State of New York; Balaban & Katz Corporation in the State of Delaware; Warner Bros. Pictures, Inc., Warner Bros. Circuit Management Corporation and Warner Bros. Theatres, Inc., all in the State of Delaware; that all of the above named corporate defendants are citizens of states other than states of which each and all of the plaintiffs are citizens, and all of said corporate defendants are doing business in and found in the City of Chicago and State of Illinois.

3. That the jurisdiction of this Court to hear this complaint is based upon the diversity of citizenship of each of the plaintiffs to each of the defendants and upon the fact that the controversy involves an amount of money in excess of Three Thousand Dollars ($3,000.00), exclusive of interest and costs, and also upon the further ground that this Court has original jurisdiction "of all suits and proceedings arising under any law to protect trade and commerce against restraint and monopolies," and as hereinafter set forth, this controversy involves a violation of Sections 1, 2 and 7 of the Act known as the "Sherman Anti-Trust Act" (Act of July 2, 1890, Chap. 647, 26 Stat. 209, as amended; 15 U. S. Code, Sec. 1, et seq.) and Sections 1, 4 and 15 of the Act known as "the Clayton Anti-Trust Act" (Act of October 15, 1914, Chap. 323, 38 Stat. 730, as amended; 15 U. S. Code, Secs. 12-27, 18 U. S. Code, Sec. 412, 28 U. S. Code, Secs. 381-383, 386, 390, 29 U. S. Code, Sec. 52).

4. That the plaintiffs, as co-partners, as hereinabove stated, own and operate the Jackson Park Theatre, which is a motion picture theatre located on the premises legally described in Paragraph 1 of this complaint; that said co-partners have operated said theatre for the exhibition of motion picture film continuously from the 1st day of November, 1936, down to the date of the filing of this complaint and that prior to their acquisition of said theatre, it was owned and operated by Edward I. Bloom and Marie C. Bloom, the father and mother of these plaintiffs, for a period of approximately twenty (20) years; that as licensees of motion picture film produced outside the State of Illinois and transported in interstate commerce pursuant to licensing agreements the plaintiffs and each of them are engaged in interstate commerce.

5. That the above producers and distributors and theatre owners and operators, being the defendants and

each of them, are engaged in a continuing conspiracy together, contrary to the provisions of the "Sherman Anti-Trust Act" and the "Clayton Anti-Trust Act," as hereinabove referred to, to illegally maintain the City of Chicago and its environs a system of releasing motion picture film for exhibition in such a manner that theatres owned, leased and operated by any of them, or by the subsidiaries of any of them, are given preference and priority in the exhibition of moving picture film over independent exhibitors and enjoy prior runs of desirable motion pictures and enjoy clearance over comparable and competing theatres not owned, controlled, leased or operated by any of the defendant companies; that a system of release has been set up and exists by virtue of agreements between said defendants made pursuant to such conspiracy in restraint of trade and is, as follows: That the so-called "first run" theatres located in the Chicago Loop, all of which are owned, leased or operated by one or more of the defendants, are given the "pre-release showing" or right to exhibit any "first run" film produced by any of the defendants; that such exhibition is licensed by the defendant distributors for a period of at least one (1) week, or for such further period as the said "Loop" Theatres may desire to exhibit the same; that upon the conclusion of such "run", said motion picture film cannot be shown by any theatre outside the Chicago Loop but located within the Chicago District, in which the plaintiffs' theatre is located until the expiration of a period of three (3) weeks after the conclusion of the "Chicago Loop run"; that such period of three weeks is known in the trade as a period of "waiting time", but is actually unreasonable "clearance" given the "Loop first run" theatres in the Chicago District; that after the conclusion of such "run" in the Chicago "Loop" and the expiration of such "waiting time," motion picture film is "released" for exhibition in the fourth week after the conclusion of the "Chicago Loop run" in what is known as "A pre-release weeks," which are known as first, second and third "A pre-release weeks"; that upon the conclusion of this "run," pictures are released in "B pre-release weeks" as first and second "B pre-release weeks," and upon the conclusion of this "run," in "C pre-release week;" that at the conclusion of all pre-release weeks, or in the tenth week after the conclusion of the "Chicago Loop run," pictures are released in weeks of general re-

lease, numbered consecutively; that the theatres granted desirable "runs" by the defendant distributors are owned and operated by one or more of the defendants, controlled by or affiliated with said defendant distributors or one or more of them and said system is designed and used by the defendants to create unreasonable clearance in favor of distributor-controlled or affiliated theatres over independent theatres and to give the more advantageous playing positions or "runs" to the theatres owned and operated by or affiliated with any of the defendant distributors of motion picture film and thus to suppress the competition of independent theatres and that the entire system of release is utilized by the defendants to further an unlawful and illegal conspiracy and agreement, whereby independent theatres are prevented from competing on equal terms of price with the producer and distributor-owned or affiliated theatres for the right to exhibit motion picture film, and the plaintiffs' theatre known as the Jackson Park Theatre is by virtue of this illegal system of release and its illegal use by the distributor defendants unable to obtain the license of film from any of the defendant distributors until the tenth week after the conclusion of the "run" of the so-called "first run Chicago Loop" theatres.

6. That by virtue of their geographical location the immediate competitors of the Jackson Park Theatre are the following theatres enjoying the following respective "runs" and owned by the following respective defendants, to-wit:

The Tivoli Theatre, located at 6325 South Cottage Grove Avenue, Chicago, Illinois, having a seating capacity of 2,500 seats, playing pictures in first "A" pre-release week, and owned and operated by the defendant Balaban & Katz Corporation;

The Tower Theatre, located at 1520 East 63rd Street, Chicago, Illinois, having a seating capacity of 2,060 seats, owned and operated by the defendant Balaban & Katz Corporation and playing in first "B" pre-release week;

The Maryland Theatre, previously known as the Woodlawn Theatre, located at 855 East 63rd Street, Chicago, Illinois, having a seating capacity of 1,500 seats, owned and operated by the defendant Balaban & Katz Corporation, playing in "C" pre-release week;

The Jeffery Theatre, located at 1952 East 71st Street, Chicago, Illinois, having a seating capacity of 1,800 seats,

owned and operated by the defendant Warner Bros. Theatres, Inc., playing "C" pre-release week;

The Avalon Theatre, located at 1645 East 79th Street, Chicago, Illinois, having a seating capacity of 2500 seats, owned and operated by the defendant Warner Bros. Theatres, Inc., playing in second "A" pre-release week;

The Shore Theatre, located at 2507 East 75th Street, Chicago, Illinois, having a seating capacity of 1,420 seats, owned and operated by the defendant Warner Bros. Theatres, Inc., playing in first week of general release;

The Grove Theatre, located at 7620 Cottage Grove Avenue, Chicago, Illinois, having a seating capacity of 2,500 seats, owned and operated by the defendant Warner Bros. Theatres, Inc., having a playing position in "C" pre-release week.

That the runs so granted the above theatres are discriminatory and arbitrary and illegally discriminate against the business of the plaintiffs herein in favor of the defendant exhibitors.

7. That the defendant Balaban & Katz Corporation is the owner or lessee of a large chain or circuit of theatres in the Chicago exchange district and is a subsidiary of Paramount Pictures, Inc., which is a producer and distributor of motion picture film; that said latter company owns all of the stock of said Balaban & Katz Corporation, except five (5) qualifying shares issued to directors; that the defendant Warner Bros. Pictures, Inc., is a producer and distributor of motion picture film and the owner of the majority of the capital stock of the defendants Warner Brothers Theatres, Inc. and Warner Bros. Circuit Management Corporation which said last two named defendant corporations own and operate a large chain or circuit of motion picture theatres in the Chicago exchange district; that Paramount Pictures, Inc., Warner Bros. Pictures, Inc., and the other distributor defendants, pursuant to the illegal agreement and conspiracy herein set forth, refuse to sell "first run" feature pictures to the plaintiffs, except in a week of release noncompetitive to the "runs" granted any and all theatres owned and operated or leased by any of the other defendants, to-wit, as set forth in paragraph 5 hereof, or prior to the tenth week after the conclusion of the "Chicago Loop run" of "first run" theatres.

8. That pursuant to such illegal agreement and conspiracy, and in order to destroy the plaintiffs' business in competition with distributor-owned, controlled or operated

or affiliated theatres; none of the defendant distributors or producers of motion picture film will license any "feature" film to the plaintiffs for exhibition prior to the first week of general release, which results in the plaintiffs' theatre being unable to obtain any feature film for exhibition until after such film has been exhibited, or the right to such exhibition refused, by all but one of the theatres competing with the plaintiffs' theatres and owned by the said Balaban & Katz Corporation, defendant, and the said Warner Bros. Theatres, Inc., and Warner Bros. Circuit Management Corporation, defendants; that said unlawful conspiracy in contravention of the provisions of Sections 1 and 2 of the "Sherman Act" is a contract and combination and conspiracy and monopoly in restraint of trade and interstate commerce, in that the licensing of motion picture film produced in states other than the State of Illinois is a transaction in interstate commerce, and the unlawful agreement and conspiracy and monopoly in restraint of said commerce complained of herein is expressly prohibited by the provisions of the "Sherman Anti-Trust Act" and the "Clayton Anti-Trust Act," herein referred to.

10. That the plaintiffs' theatre is a modern theatre in all respects and has been engaged in the showing of motion pictures since the beginning of the year 1916; that it is impossible to operate said theatre profitably unless "first run" feature pictures can be obtained on a competitive basis; that prior to the inception of said unlawful conspiracy, said theatre was able to compete on equal terms as to price and as to playing position and as to "clearance" with all other theatres in its competitive district; that prior to such time none of the theatres herein mentioned, belonging to the defendants, or some of them, except the Tivoli and the Avalon, played motion pictures on prior release dates to that of the plaintiffs' theatre; that prior to said illegal agreement and conspiracy the plaintiffs' theatre played ahead of the Shore Theatre, the Woodlawn Theatre, now the Maryland Theatre and the Jeffery Theatre; that the Tivoli and Avalon Theatres on a competitive basis enjoyed a release date only one week in advance of the Jackson Park Theatre, but that now said Tivoli Theatre enjoys a playing position six (6) weeks ahead and the Avalon Theatre enjoys a playing position five (5) weeks ahead of the plaintiffs' theatre; that prior to the inception of said unlawful agreement, as evidenced in part by the present release system, and its concerted use by the defend-

ants to suppress the competition of the plaintiffs' theatre with the distributor defendants' affiliates all of said theatres could play motion pictures immediately following the exhibition of said films in the Chicago Loop, and each theatre was free to compete for any picture, on the basis of price; that the result of the aforesaid continuing unlawful conspiracy and agreement and monopoly to restrain trade and interstate commerce, which had its inception at some date unknown to the plaintiffs but prior to their acquisition of the Jackson Park Theatre, is that the plaintiffs have, since the acquisition by them of the Jackson Park Theatre, been unable to obtain film for exhibition on a competitive basis; that regardless of the price offered for the license of film, the defendant distributors have refused to release the same for exhibition by the plaintiffs until after it has been exhibited by the distributor-owned, operated, affiliated competitors of the plaintiffs; that the defendants, Loew's, Incorporated, Paramount Pictures, Inc., RKO Radio Pictures, Inc., Twentieth Century-Fox Film Corporation, Vitagraph, Inc. and Warner Bros. Pictures, Inc., together, control approximately ninety per cent (90%) of the production of motion picture film in the United States; that it is impossible to operate the Jackson Park Theatre at a profit without licensing motion picture film for exhibition from some one or more of said defendants at release dates competitive with other theatres in the competitive district of plaintiffs' theatre; that immediately upon the acquisition of the Jackson Park Theatre by the plaintiffs, the defendants, being then combined together in an unlawful and continuing conspiracy, in addition to the other illegal acts hereinabove complained of, by introducing "double features" in their own affiliated theatres competing with the plaintiffs' theatre, forced the plaintiffs to buy double features; that said forcing of film was accomplished by the concerted action of said defendants in introducing "double features" in their own theatres or theatres owned by companies affiliated with them or one or more of them, and thereby the defendants greatly increased the cost of exhibiting film in plaintiffs' theatre; that by reason of the ownership and control of the plaintiffs' competitors, as herein named, by the producer and exhibitor defendants, and by reason of the other defendants acting in concert with them in consideration of similar reciprocal concerted action in metropolitan centers other than Chicago, the defendants have prevented the plaintiffs from entrance to the vital "first run" film market; that

the plaintiffs have thus been relegated to a secondary and inferior position in the exhibition of motion picture film and compelled, by virtue of said unlawful conspiracy to accept pictures for exhibition after the defendants' affiliated theatres were through with them, and subject to unfavorable rental terms and conditions of availability, including clearance and zoning; that the plaintiffs have thus been denied a free, open and untrammeled market in which to buy product based upon their ability and willingness to pay fair and reasonable film rentals; that pursuant to such unlawful conspiracy, the competing theatres herein named have been granted unreasonable, discriminatory and arbitrary clearance and run over the Jackson Park Theatre and the plaintiffs have thus been discriminated against in favor of the theatres owned by the defendants, Balaban & Katz Corporation, Warner Bros. Theatres, Inc. and Warner Bros. Circuit Management Corporation; that the plaintiffs have also been, by virtue of such unlawful conspiracy, forced to buy film under a system of "block booking," whereby they are forced to contract in advance for a number of films and forced to contract for films "sight-unseen" and forced to buy short subjects, newsreels, serials and reissues, which they did not desire to exhibit, as a condition to the licensing by the defendant distributors of "feature" pictures to the plaintiffs.

11. That at the time of the acquisition of the said Jackson Park Theatre property by the plaintiffs, the net annual income, derived from the operation thereof, was in excess of Fifty Thousand Dollars ($50,000.00); that as a direct and proximate cause of the operation of said unlawful agreement and conspiracy against the plaintiffs' business, it has been subjected to a net loss of earnings in excess of One Hundred Twenty Thousand Dollars ($120,000.00) during the period from the time the plaintiffs acquired said business down to the date of the institution of this suit, and that the plaintiffs' total damages, being treble damages as provided in the "Sherman Act" are in excess of Three Hundred Sixty Thousand Dollars ($360,000.00).

12. That the aforesaid illegal agreement and conspiracy in restraint of interstate commerce is a continuing one, and the award of treble damages is not adequate to protect the business of plaintiffs from further future damages, and that therefore the plaintiffs have no complete and adequate remedy at law.

Wherefore the plaintiffs ask that summons issue against the defendants named herein requiring them and each of them to appear and answer this complaint within the time fixed by the rules of this Court, and that after a hearing on issues joined, a joint and several judgment be entered against the defendants in the amount of Four Hundred Thousand Dollars ($400,000.00), including in such amount such reasonable attorney's fees as may be allowed by the Court for the services rendered herein by the plaintiffs' attorney, and plaintiffs also ask that the defendants and each of them, their agents, attorneys, successors, and representatives be perpetually enjoined from refusing to license on a competitive basis motion picture film for exhibition by the plaintiffs in the Jackson Park Theatre, and that the aforesaid system for the release of motion picture film, as set forth herein, be declared to be in restraint of interstate commerce and its enforcement by the defendants against the business of the plaintiffs as exhibitors of motion picture film be perpetually enjoined.

Florence B. Bigelow,
Marion B. Koerber,
John E. Bloom,
William C. Bloom,
By Thomas C. McConnell,
Their Attorney.

By Thomas C. McConnell,
Attorney for Plaintiffs.
133 S. La Salle St.,
Chicago, Ill.

The plaintiffs and each of them pursuant to Rule 38 of the Rules of Civil Procedure for the District Courts of the United States demand a trial by jury of all issues tendered by the above and foregoing complaint, except the issue of whether or not the plaintiffs are entitled to the equitable injunctive relief prayed.

By Thomas C. McConnell,
Attorney for Plaintiffs.

5 And afterwards on, to wit, the 17th day of September, 1942 came the Defendants RKO Radio Pictures, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Motions for a more definite statement of claim or Bill of Particulars and to Strike Specified Portions of Plaintiffs' Complaint, etc., in words and figures following, to wit:

6 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

MOTIONS OF THE DEFENDANTS RKO RADIO PICTURES, INC., LOEW'S INCORPORATED AND TWENTIETH CENTURY-FOX FILM CORPORATION FOR A MORE DEFINITE STATEMENT OF CLAIM OR BILL OF PARTICULARS AND TO STRIKE SPECIFIED PORTIONS OF PLAINTIFFS' COMPLAINT, ETC.

Now come RKO Radio Pictures, Inc., a corporation, Loew's Incorporated, a corporation, and Twentieth Century-Fox Film Corporation, a corporation, defendants in the above entitled cause, by Mayer, Meyer, Austrian & Platt, their attorneys, and present the following several actions with respect to plaintiffs' complaint herein:

I.

Said defendants respectfully show that the several matters hereinafter specified are not averred with sufficient definiteness or particularity to enable them properly to prepare their responsive pleading or to prepare for trial:

1: The allegation in paragraph 1 of said complaint that "each plaintiff is the owner of a one-fourth un-
7 divided interest in certain property held in Land Trust No. 11329 by the Live Stock National Bank" is so indefinite as to the nature of each plaintiff's claimed interest, the existence or non-existence of any other interest in said property, and the rights and duties of the alleged trustee, that it cannot be determined whether plaintiffs are the proper parties to sue on account of alleged injury to said property or whether they are all of the necessary parties to such a suit.

2. Nowhere in said complaint does it appear when it is claimed that the conspiracy alleged in paragarph 5 of said complaint had its inception. Although it is alleged at one point in paragraph 10 thereof that the alleged conspiracy "had its inception at some date unknown to the plaintiff" it is further alleged that such date was prior to plaintiffs' acquisition of the Jackson Park Theatre, and was subsequent to some unspecified time when allegedly "all of said theatres could play motion pictures immediately following the exhibition of said films in the Chicago Loop, and each theatre was free to compete for any picture, on the basis of price." Plaintiffs therefore have some purported knowledge at least as to the approximate time of the inception of the alleged conspiracy.

3. The allegation in paragraph 5 of said complaint, "* * * that a system of release has been set up and exists by virtue of agreements between said defendants * * *," fails to identify or describe the alleged agreements either as to the form thereof or as to the substance thereof or as to the parties to each such agreement or as to the time or times when said agreements were entered into.

4. The allegation in paragraph 10 of said complaint, "* * * that immediately upon the acquisition of the Jackson Park Theatre by the plaintiffs, the defendants, being then combined together in an unlawful and continuing conspiracy, in addition to the other illegal acts hereinabove complained of, by introducing 'double features' in their own affiliated theatres competing with the plaintiffs' theatre, forced the plaintiffs to buy double features * * *," fails to inform defendants whether it is claimed that they combined, contracted or conspired to introduce double features and, if so, the time when it is claimed that they so conspired, and also fails to inform defendants what, if any, claimed connection there may be between the alleged introduction of double features subsequent to the acquisition of the Jackson Park Theatre by the plaintiffs and the alleged conspiracy among the defendants with respect to priority of run and clearance claimed to have been entered into prior to the acquisition of said theatre by the plaintiffs.

5. The allegation in paragraph 10 of said complaint, that, "* * * by reason of the other defendants acting in concert with them in consideration of similar reciprocal concerted action in metropolitan centers other than Chi-

cago, the defendants have prevented the plaintiffs from entrance to the vital 'first run' film market * * *," fails to inform the defendants how they are claimed to have acted in concert in Chicago or to identify or describe the "similar reciprocal concerted action in metropolitan centers other than Chicago" or to identify said "metropolitan centers other than Chicago" or to define the term "first run film market," and also fails to inform the defendants what, if any, connection there may be between the alleged prevention of plaintiffs' entrance into said first run film market and the alleged conspiracy among the defendants with respect to priority of run and clearance described in paragraph 5 of said complaint.

6. The allegation in paragraph 10 of said complaint that, "* * * the plaintiffs have thus been * * * compelled, by virtue of said unlawful conspiracy to accept pictures for exhibition * * * subject to unfavorable * * * conditions of availability, including clearance and zoning * * *," fails to inform the defendants what is meant by the term "zoning" or what were the alleged unfavorable conditions of zoning to which it is claimed the plaintiffs' theatre was subjected;

7. The allegation in paragraph 10 of said complaint, "* * * that the plaintiffs have also been, by virtue of such unlawful conspiracy, forced to buy film under a system of block booking * * *," fails to inform the defendants whether it is claimed that they conspired to force plaintiffs to buy film under a system of block booking and, if so, when they are claimed to have so conspired, or to inform them what, if any, connection there may be between the alleged block booking and the alleged conspiracy among the defendants with respect to priority of run and clearance described in paragraph 5 of said complaint.

Said defendants further show that there are no other allegations in said complaint which supply the above mentioned insufficiencies with respect to the allegations complained of.

Wherefore, said defendants move that plaintiffs be required to furnish them a more definite statement of claim or a bill of particulars containing the following information:

1. With respect to paragraph 1 of said complaint, the substantial terms of Land Trust No. 11329 showing the claimed nature and extent of plaintiffs' interest in the pro-

perty comprising the Jackson Park Theatre, all other interests in said property, if any, and the nature of the trustee's rights and duties.

2. With respect to paragraph 5 of said complaint:

(a) The time, or the closest approximation thereof, which plaintiffs can state from all of the facts known to them, when it is claimed that the alleged "continuing conspiracy" among the defendants had its inception.

(b) Whether the agreements alleged to have been entered into among the defendants pursuant to conspiracy were oral or in writing.

(c) The time when each such agreement is claimed to have been entered into.

(d) The claimed parties to each such agreement.

(e) The claimed substantial terms of each such agreement; and

(f) The claimed period of time during which each such agreement remained in effect.

11 3. With respect to paragraph 10 of said complaint:

(a) The period of time prior to the inception of the alleged unlawful conspiracy when it is claimed that "all of said theatres could play motion pictures immediately following the exhibition of said films in the Chicago Loop, and each theatre was able to compete for any picture, on the basis of price."

(b) Whether it is claimed that the defendants conspired to introduce double features in their theatres and, if so, when it is claimed that the defendants so conspired.

(c) What, if any, claimed connection there may be between the alleged introduction by the defendants of double features in their theatres and the alleged conspiracy among the defendants with respect to priority of run and clearance described in paragraph 5 of said complaint.

(d) The manner in which it is claimed that the defendants acted in concert in Chicago to prevent the plaintiffs from entrance to the alleged "first run film market."

(e) The nature of the alleged "similar reciprocal concerted action" alleged to have been taken by the defendants in metropolitan centers other than Chicago and when and by whom each such action is claimed to have been taken.

12 (f) The names of the said alleged metropolitan centers other than Chicago.

(g) The meaning of the term "first run film market."

(h) The connection, if any, between the alleged preven-

tion of the entrance of plaintiffs into the "first run film market" and the alleged conspiracy among the defendants with respect to priority of run and clearance described in paragraph 5 of said complaint.

(i) The meaning of the word "zoning" as used in said paragraph and the nature of the alleged unfavorable conditions of zoning to which it is alleged the plaintiffs' theatre was subjected.

(j) Whether it is claimed that the defendants conspired to force plaintiffs to buy film under a system of block booking and, if so, when it is claimed that they so conspired.

(k) The connection, if any, between the alleged fact that plaintiffs were forced to buy film under a system of block booking and the alleged conspiracy among the defendants with respect to priority of run and clearance described in paragraph 5 of said complaint.

II.

Said defendants further show that the allegations in paragraph 10 of said complaint with respect to double features and with respect to an alleged first run market and with respect to block booking are, on the face of said complaint, wholly unrelated to the alleged conspiracy among the
13 defendants with respect to priority of run and clearance described in paragraph 5 of said complaint and are not in themselves sufficient to constitute one or more separate and distinct claimed violations of law, and are intermingled with allegations which appear to be merely repetitious of the allegations of conspiracy contained in paragraph 5 of said complaint.

Wherefore, said defendants move that all of paragraph 10 of said complaint, beginning with the words "that immediately upon the acquisition of the Jackson Park Theatre by the plaintiffs, the defendants, being then and there combined together * * *", and comprising approximately the last half of said paragraph 10, be stricken as redundant, immaterial, impertinent or scandalous.

III.

Said defendants further show unto the Court that some of the above mentioned allegations in paragraph 10 of said complaint are apparently attempts by the plaintiffs to allege unlawful acts of the defendants separate from and in addi-

tion to the alleged unlawful conspiracy with respect to priority of run and clearance described in paragraph 5 of said complaint.

Wherefore, said defendants move that plaintiffs be ordered to amend their complaint so as to clearly separate and set forth in separately numbered paragraphs or counts each separate alleged violation of law with which plaintiffs seek to charge defendants.

Mayer, Meyer, Austrian & Platt,
Attorneys for said Defendants,
By Miles G. Seeley,
A Member of said Firm.

Miles G. Seeley,
Of Counsel.

14 And on the same day, to wit, the 17th day of September, 1942 came the Defendants, Vitagraph, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Motion For Bill Of Particulars in words and figures following, to wit:

15 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—4525) * *

MOTION OF THE DEFENDANTS, VITAGRAPH, INC., A CORPORATION, WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, A CORPORATION, AND WARNER BROS. THEATRES, INC., A CORPORATION, FOR BILL OF PARTICULARS.

Now comes Vitagraph, Inc., a corporation, Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation, by Defrees, Fiske, O'Brien & Thomson, their attorneys, and say that the several matters hereinafter specified are not averred with sufficient definiteness or particularity to enable these defendants to prepare their responsive pleadings or to prepare for trial:

1. The allegation in paragraph 5 of said complaint "* * * that a system of release has been set up and exists by virtue of agreements between said defendants * * *" fails to identify or describe the alleged agreements either as to the form thereof or as to the substance thereof or as

to the parties to each such agreement or as to the time or times when said agreements were entered into;

16 2. The allegation in paragraph 10 of said complaint "* * * that prior to the inception of said unlawful conspiracy, said theatre was able to compete on equal terms as to price and as to playing position and as to clearance with all other theatres in its competitive district * * *" fails to show the period of time when it is claimed that such alleged condition existed;

3. The allegation in paragraph 10 of said complaint "* * * that immediately upon the acquisition of the Jackson Park Theatre by the plaintiffs, the defendants, being then combined together in an unlawful and continuing conspiracy, in addition to the other illegal acts hereinabove complained of, by introducing 'double features' in their own affiliated theatres competing with the plaintiffs' theatre, forced the plaintiffs to buy double features * * *", fails to inform defendants whether it is claimed that they combined, contracted or conspired to introduce double features and, if so, the time when it is claimed that they so conspired, and also fails to inform defendants what, if any, claimed connection there may be between the alleged introduction of double features subsequent to the acquisition of the Jackson Park Theatre by the plaintiffs and the alleged conspiracy among the defendants with respect to priority of run and clearance claimed to have been entered into prior to the acquisition of said theatre by the plaintiffs;

4. The allegation in paragraph 10 of said complaint that "* * * by reason of the other defendants acting in concert with them in consideration of similar reciprocal concerted action in metropolitan centers other than Chicago, the defendants have prevented the plaintiffs from

17 entrance to the vital 'first run' film market * * *", fails to inform the defendants how they are claimed to have acted in concert in Chicago or to identify or describe the "similar reciprocal concerted action in metropolitan centers other than Chicago" or to identify said "metropolitan centers other than Chicago" or to define the term "first run film market," and also fails to inform the defendants what, if any, connection there may be between the alleged prevention of plaintiffs' entrance into said first run film market and the alleged conspiracy

among the defendants with respect to priority of run and clearance described in paragraph 5 of said complaint;

5. The allegation in paragraph 10 of said complaint that "* * * the plaintiffs have thus been * * * compelled, by virtue of said unlawful conspiracy to accept pictures for exhibition * * * subject to unfavorable * * * conditions of availability, including clearance and zoning * * *", fails to inform the defendants what is meant by the term "zoning" or what were the alleged unfavorable conditions of zoning to which it is claimed the plaintiffs' theatre was subjected;

6. The allegation in paragraph 10 of said complaint "* * * that the plaintiffs have also been, by virtue of such unlawful conspiracy, forced to buy film under a system of block booking * * *", fails to inform the defendants whether it is claimed that they conspired to force plaintiffs to buy film under a system of block booking and, if so, when they are claimed to have so conspired, or to inform them what, if any, connection there may be between the alleged block booking and the alleged conspiracy among the defendants with respect to priority of run and clearance described in paragraph 5 of said complaint.

18 Said defendants further show that there are no other allegations in said complaint which supply the abovementioned insufficiencies with respect to the allegations complained of.

Wherefore, said defendants ask that the plaintiffs be required to furnish a more definite complaint or a bill of particulars in respect of the said several matters so hereinabove specified.

Defrees, Fiske, O'Brien & Thomson,
By Vincent H. O'Brien.

19 And on the same day, to wit, the 17th day of September, 1942 came the Defendants, Paramount Pictures, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Motion For A More Definite Statement Of Claim Or Bill of Particulars And To Strike Specified Portions Of Plaintiffs' Complaint, Etc. in words and figures following, to wit:

20 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

MOTION OF PARAMOUNT PICTURES INC. AND BALABAN & KATZ CORPORATION FOR A MORE DEFINITE STATEMENT OF CLAIM OR BILL OF PARTICULARS AND TO STRIKE SPECIFIED PORTIONS OF PLAINTIFFS' COMPLAINT, ETC.

Now come Paramount Pictures Inc., a corporation, and Balaban & Katz Corporation, a corporation, defendants in the above entitled cause by Spitz & Adcock, Edmund D. Adcock, Arthur A. Goldberg and Eli E. Fink, their attorneys, and present the following motions with respect to the plaintiffs' complaint herein:

I.

Said defendants respectfully show that the several matters alleged and mentioned in plaintiffs' complaint hereinafter specified are not averred with sufficient definiteness or particularity to enable them properly to
21 prepare their respective pleading or to prepare for trial:

1. Paragraph 1 of the complaint alleges that each of the plaintiffs are the owners of certain property legally described therein which property is "held in land trust No. 11329 by the Livestock National Bank, a corporation of Chicago, Illinois", but no copy of the trust agreement is attached to or incorporated in the complaint, so these defendants are unable to determine whether or not under the said trust agreement, the plaintiffs are the proper parties to bring this action, and these defendants are unable to determine whether or not all necessary parties have been joined in this action.

2. Paragraph 5 of the complaint alleges that "the defendants and each of them are engaged in a continuing conspiracy together * * * to illegally maintain in the City of Chicago and its environs a system of releasing motion picture film * * *", but the complaint fails to state the date when such alleged conspiracy was entered into or became effective.

3. Paragraph 5 of the complaint on page 4 thereof alleges "that a system of release has been set up and exists by virtue of agreements between said defendants made pursuant to such conspiracy in restraint of trade * * *", but the complaint fails to allege whether these agreements were written or oral, who the parties to the agreements were, or when they were entered into.

4. Paragraph 5 of the complaint on page 5 thereof alleges that "the entire system of release is utilized by the defendants to further an unlawful and illegal conspiracy and agreement * * *", but the complaint fails to allege when this conspiracy and agreement was entered into, whether the agreement was written or oral, or who the parties to the agreement were.

5. Paragraph 7 of the complaint alleges that the "distributor defendants, pursuant to the illegal agreement and conspiracy herein set forth, refuse to sell 'first run' feature pictures to the plaintiffs except * * *", and Paragraph 8 also refers to "such illegal agreement and conspiracy", but the complaint fails to allege when the alleged agreement and conspiracy were entered into, and the complaint fails to define the phrase "first run" feature pictures.

6. Paragraph 10 of the complaint alleges that "prior to the inception of said unlawful conspiracy, said theatre was able to compete on equal terms as to price and as to playing position and as to clearance with all other theatres in its competitive district * * *", but the complaint fails to show the date of the alleged inception of such unlawful conspiracy; and fails to show the dates when the plaintiffs' theatre is alleged to have been able to compete on equal terms. This paragraph 10 also contains in a number of places the expressions "prior to such time", "prior to said illegal agreement and conspiracy", and "prior to the inception of said unlawful agreement", but in none of these instances does the complaint state the date or dates referred to.

7. Paragraph 10 of the complaint alleges "that immediately upon the acquisition of the Jackson Park Theatre by the plaintiffs, the defendants, being then combined together in an unlawful and continuing conspiracy in addition to the other illegal acts complained of, by introducing 'double features' in their own affiliated theatres competing with the plaintiffs' theatre, forced the plaintiffs to buy double features", but the complaint does not state whether or not it is charged that these alleged acts were done pursuant to any conspiracy or agreement, or whether, if it is alleged that these acts were done pursuant to an alleged conspiracy or agreement, it was the same conspiracy or agreement as the alleged conspiracy and agreement relating to "runs and clearances," or a different conspiracy or agreement, and whether if this refers to a different conspiracy or agreement, there is any connection or relationship between this conspiracy or agreement and the conspiracy or agreement alleged with reference to "runs" and "clearance".

8. Paragraph 10 of the complaint on page 10 states "by reason of the other defendants acting in concert with them in consideration of similar reciprocal concerted action in metropolitan centers other than Chicago", certain results have allegedly been accomplished but it fails to state the names of the "metropolitan centers other than Chicago" which are referred to, or to state what the "similar reciprocal concerted action" was, or when and where it took place, and who were the parties to it.

9. Paragraph 10 on page 10 refers to "the vital 'first run' film market", but it does not define or explain what the vital first run film market is or what it means.

10. Paragraph 10 on page 10 alleges that the plaintiffs have been "subject to unfavorable rental terms and conditions of availability, including clearance and zoning", but the complaint does not define the term "zoning" or state what the "unfavorable terms and conditions" were or are.

11. Paragraph 10 on page 10 alleges "that the plaintiffs have also been, by virtue of such unlawful conspiracy, forced to buy film under a system of 'block booking' whereby they are forced to contract in advance for a number of films and forced to contract for films 'sight unseen' and forced to buy short subjects, newsreels, se-

rials and reissues which they did not desire to exhibit, as a condition to the licensing by the defendant distributors of 'feature' pictures to the plaintiffs'', but the complaint does not allege when the alleged conspiracy to accomplish such purposes was entered into, nor how long it continued.

12. Paragraph 11 refers to the net annual income derived from the operation of the "Jackson Park Theatre property", but it does not state clearly whether this net annual income was derived solely from the operation of the Jackson Park Theatre or whether this income was the total income derived from the property including the non-theatrical portion thereof as well as the theatre. This paragraph also alleges that at the time of the acquisition of the said Jackson Park Theatre property by the plaintiffs which occurred on November 1, 1936, the net annual income derived from the operation thereof, was in excess of $50,000 and that as a direct and proximate cause of the operation of "said unlawful agreement and conspiracy against the plaintiffs' business, it has been subjected to a net loss of earnings in excess of $120,000 during the period from the time the plaintiffs acquired said business down to the date of the institution of this suit", and this is stated to be the basis of the plaintiffs' claim for damages but the complaint does not allege what changes have taken place in the operation of or in the run or clearance of the plaintiffs' theatre or of other theatres which are alleged to be competitive to the plaintiffs' theatre since November 1, 1936 which were caused by any act or acts of the defendants or any of them and which are claimed to have resulted in or contributed to this alleged loss of earnings.

Wherefore, said defendants move that plaintiffs be required to furnish them a more definite and particular statement of the matters above mentioned or a bill of particulars containing the following information:

1. With respect to paragraph 1 of the complaint:

(a) Incorporate in or attach to the more definite statement of claim or bill of particulars a copy of the trust agreement under which the property described in paragraph 1 of the complaint is being held by the Livestock National Bank, as trustee.

2. With respect to paragraph 5 of the complaint:

(a) The date when the "continuing conspiracy" referred to in line 3 of paragraph 5 of the complaint was entered into or became effective;

(b) Whether the agreements referred to were written or oral, who the parties to the agreements were and the date when they were entered into;

(c) The date when the "unlawful conspiracy and agreement" referred to in paragraph 5 on page 5 of the complaint, were entered into, whether the agreement was written or oral and who were the parties to the agreement;

3. With respect to paragraphs 7 and 8 of the complaint:

(a) The date when the "agreement and conspiracy" referred to in these paragraphs of the complaint were entered into;

(b) The meaning of the term "'first run' feature pictures" as used in paragraph 7 of the complaint;

4. With respect to paragraph 10 of the complaint:

(a) The time when the alleged "unlawful con-
26 spiracy" referred to in this paragraph took place;

(b) The dates when the plaintiffs' theatre is alleged to have been able to compete on equal terms as to price and as to playing position and as to clearance with all other theatres in its competitive district, and the date when it first became unable to do so.

(c) The dates when "none of the theatres herein mentioned belonging to the defendants or some of them, except the Tivoli and the Avalon, played motion pictures on prior release dates to that of the plaintiffs' theatre" and the date when this condition changed and specify the nature of the change in this respect;

(d) The time when the plaintiffs' theatre "played ahead of the Shore Theatre, the Woodlawn Theatre, now the Maryland Theatre, and the Jeffery Theatre", the date when this condition changed, and specify just what the change in condition was.

(e) The dates or time when "the Tivoli Theatre enjoyed a release date only one week in advance of the Jackson Park Theatre" and the date when this condition changed;

(f) The dates or time when "all of such theatres could play motion pictures immediately following the exhibition of said films in the Chicago Loop, and each theatre was

free to compete for any picture, on the basis of price," and the date when this condition changed and what was the exact change in this condition;

27 (a) Whether the plaintiffs' claim that the defendants conspired or agreed to introduce "'double features' in their own affiliated theatres," and whether if the plaintiffs do so claim, this alleged conspiracy or agreement relating to "runs and clearances" or is a different conspiracy or agreement, and whether, if the plaintiffs claim that this was a separate agreement or conspiracy, there is any connection or relationship charged between this conspiracy or agreement and the conspiracy or agreement alleged with reference to "runs" and "clearances";

(h) Describe the "similar reciprocal concerted action" referred to and state when and where it took place and who were the parties to it, and name the "metropolitan centers other than Chicago" referred to in this paragraph of the complaint;

(i) Define the phrase "the vital 'first run' film market";

(j) Define the term "zoning" as used in the complaint;

(k) State what the "unfavorable conditions of availability, including [redacted] zoning" to which the plaintiffs' theatre is alleged to have been subjected, are.

(l) State when the alleged conspiracy to force plaintiffs "to contract in advance for a number of films" and "to buy short subjects, newsreels, serials, and reissues which they did not desire to exhibit" was entered into, and how long it is alleged to have continued.

5. With respect to paragraph 11 of the complaint:

(a) State whether the net annual income derived from the operation of the "Jackson Park Theatre property" was derived solely from the operation of the Jackson Park

28 Theatre or whether this income was the total income derived from the property, including the non-theatrical portion thereof as well as the theatre;

(b) State what the net annual income from the Jackson Park Theatre itself has been for the year of 1936 and for each year since then down to date;

(c) State what change or changes are alleged to have taken place in the run or clearance of the Jackson Park Theatre since November 1, 1936 and what other changes are alleged to have taken place in the operation or policy of the Jackson Park Theatre and the other theatres which plaintiffs allege to be competitive to the Jackson Park

Theatre which are alleged to have been caused by any act or acts of the defendants or any of them and which are alleged to have resulted in or contributed to the alleged loss of earnings at the Jackson Park Theatre.

II.

These defendants move to strike that part of paragraph 10 of the complaint beginning with the words "that immediately upon the acquisition of the Jackson Park Theatre by the plaintiffs," through the end of paragraph 10, for the reason that this portion of the complaint makes certain charges which have no relation to or connection with the alleged conspiracy relating to runs and clearances as set forth in paragraph 5 and which allegations do not state a claim upon which relief can be granted. To the extent that this portion of paragraph 10 does refer to the alleged conspiracy relating to runs and clearances, it is repetitious and redundant, and should therefore be stricken.

29

III.

The complaint, and particularly paragraph 10 thereof, consists of a confusing mixture of what appears to be entirely different charges of violation of law. These defendants therefore move that the plaintiffs be ordered to amend their complaint so as to set forth in separately numbered paragraphs each separate violation of law which is charged.

Paramount Pictures, Inc.,
Balaban & Katz Corporation.

Defendants.

By Spitz & Adcock,
Edmund D. Adcock,
Arthur A. Goldberg,
Eli E. Fink,
Attorneys for said defendants.

By Arthur A. Goldberg.

30 And afterwards, to wit, on the 1st day of December, 1942, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge appears the following entry, to wit:

31 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Complaint—4525) * *

ORDER.

This matter coming on to be heard on the motions of RKO Radio Pictures, Inc., Loew's, Incorporated, Twentieth Century-Fox Film Corporation, Vitagraph, Inc., Warner Bros. Circuit Management Corporation, Warner Bros. Theatres, Inc., Paramount Pictures, Inc., and Balaban & Katz Corporation, defendants herein, for Bills of Particulars and to Strike Certain Allegations of the Complaint, or in the alternative, to order the inclusion of certain allegations in separate counts, and the matter also coming on to be heard on the Motion of Warner Bros. Pictures, Inc., to Quash the Summons and Dismiss the Suit because of alleged imperfection in the service of the process of this Court,

And the Court having heard the matter upon briefs submitted by the parties and upon oral argument of counsel for the respective parties, and being fully advised in the premises.

It Is Hereby Ordered that each and all of the various Motions to Strike and for Bills of Particulars and for a further pleading on the part of the plaintiffs, be and they are hereby overruled.

32 It is further ordered that a ruling on the Motion of Warner Bros. Pictures, Inc., to Quash the Summons and Dismiss the Suit as to said defendant, be and the same is reserved to afford opportunity to and including December 4, 1942 to said defendant to present an amendment to its motion papers raising the issue of whether or not its general appearance in this cause by stipulating for additional time to plead to or answer the Complaint was due to inadvertence of such character as would as a matter of law negative such appearance.

It is further ordered that the defendants and each of them be and they are hereby ruled to answer or otherwise plead to the Complaint herein on or before thirty (30) days from the date of the entry of this order.

Enter:

Igoe,
Judge.

Dated, Chicago, Illinois
December 1, 1942.

33 And afterwards, to wit, the 19th day of January, 1943 came the Defendant, RKO Radio Pictures, Inc., by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

34 In the District Court of the United States,
* * (Caption—4525) *

ANSWER OF DEFENDANT RKO RADIO PICTURES, INC.

Mayer, Meyer, Austrian & Platt,
Attorneys for said defendant,
231 South LaSalle Street,
Chicago, Illinois.

Filed Jan. 19, 1943. Roy H. Johnson, Clerk.

In the District Court of the United States,
* * (Caption—4525) *

ANSWER OF DEFENDANT RKO RADIO PICTURES, INC.

Now comes RKO Radio Pictures, Inc., a corporation, one of the defendants herein, by Mayer, Meyer, Austrian & Platt, its attorneys, and answering the complaint of the plaintiff says:

1. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in par-

agraph 1 of said complaint, except that it admits that there is a motion picture theatre in Chicago, Illinois known as the Jackson Park Theatre.

2. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 2 of said complaint, except that it admits that it is incorporated under the laws of the State of Delaware and that it is doing business in and found in the City of Chicago and State of Illinois.

3. It has no knowledge or information sufficient to form a belief as to whether diversity of citizenship of each of the plaintiffs to each of the defendants exists, and it denies that the controversy involves an amount of money in excess of $3,000.00, exclusive of interests and costs, and it denies that the controversy involves any violation of the Act of July 2, 1890, known as the Sherman Antitrust Act or of the Act of October 15, 1914, known as the Clayton Antitrust Act, as alleged in paragraph 3 of said complaint.

4. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 4 of said complaint, except that it admits that the Jackson Park Theatre is a motion picture theatre located in Chicago, Illinois which has been operated for the exhibition of motion picture film for a period of approximately twenty-five years prior to the date of the filing of the plaintiff's complaint, and it admits that the operator or operators of said theatre during said period has been a licensee of motion picture film produced outside the State of Illinois and transported in interstate commerce.

5. It denies that it is engaged or that it ever has been engaged in a conspiracy with the defendants or any of them to maintain in the City of Chicago or its environs a system of releasing motion picture film for exhibition in such manner that theatres owned, leased or operated by it or any of the defendants or by subsidiaries of any of them, are given preference or priority in the exhibition of motion picture film over independent exhibitors or enjoy prior runs of desirable motion pictures, or enjoy clearance over comparable and competing theatres not owned, controlled, leased or operated by any of the defendants, and it denies that it is or ever has been engaged in any conspiracy of any nature whatsoever with the defendants or any of them with respect to the distribution or exhibition of motion picture film or with respect to priority of run or

clearance between or among any motion picture theatres in the City of Chicago or its environs. It denies that a system of release has been set up or exists by virtue of any agreement or agreements between it and any other defendant or defendants pursuant to the conspiracy alleged in paragraph 5 of said complaint or any conspiracy. It alleges that there has developed in the City of Chicago and its environs by custom and usage over a period of many years a so-called "system of release" whereby motion picture films are released for exhibition in successive release periods or "runs", which are customarily referred to as "Loop First Run", "A Pre-release Weeks", "B Pre-release Weeks", "C Pre-release Week", "First week of General Release" and subsequent general release weeks. It alleges that said "system" or pattern of release has undergone various changes and modifications in the course of its development over a period of many years, but that at and about the date of the filing of the complaint in this case the term "Loop First Run" as customarily used refers to an exhibition in a motion picture theatre in the downtown or Loop district of Chicago of a motion picture film not previously exhibited in Chicago or its environs; that such exhibition generally takes place in but one motion picture theatre and continues for a period from one week to several weeks; that each motion picture theatre licensed by a distributor to exhibit a film in the said Loop First Run customarily obtains, by the terms of the license agreement between said distributor and said exhibitor, three weeks' clearance over all other motion picture theatres in Chicago and its environs; that the next exhibitions or runs of films which have been exhibited in Loop First Run customarily take place in the A Pre-release weeks, which are the fourth, fifth and sixth weeks following the termination of Loop First Run; that the next subsequent exhibitions or runs of the same films take place in the B Pre-release weeks, which are the seventh and eighth weeks following the termination of Loop First Run; that the next subsequent exhibitions or runs of the same films take place in C Pre-release week, which is the ninth week following the termination of Loop First Run, and that the subsequent exhibitions or runs of the same films take place in the first and subsequent weeks of general release, commencing with the tenth week following the termination of Loop First Run; that all exhibitions or runs of motion

picture films in Chicago and its environs subsequent to Loop First Run generally take place simultaneously in two or more motion picture theatres in different parts of said city or its environs; that with respect to the motion picture films distributed by this defendant, the release period or run in which said films are exhibited by any theatre in the City of Chicago or its environs is determined wholly by the terms of the license agreement with respect to said films entered into between this defendant and the operator of any such theatre, without any combination, conspiracy, agreement or concern of action between this defendant and any other defendant. It denies that the above described "system of release" which has developed in the City of Chicago and its environs has been set up or exists by virtue of any agreement or agreements to which the defendant is or has been a party, except to the extent that in its individual license agreements with operators of motion picture theatres in Chicago and its environs this defendant generally uses the said "system" of release periods or runs and the terminology thereof as a convenient means of describing the time when the exhibitor is thereby licensed to exhibit its motion picture films covered by said license agreement and the priority of run and clearance, if any, accorded the exhibitor by said license agreement over competing theatres with respect to the exhibition of the same films. It denies that the theatres granted desirable runs by it include only theatres owned or operated by one or more of the defendants or controlled by or affiliated with one or more of the defendant distributors, and denies that the above described "system of clearance" is designed or used by it to create unreasonable clearance in favor of distributor controlled or affiliated theatres over independent theatres or to give the more advantageous playing positions or runs to the theatres owned and operated by or affiliated with any of the defendant distributors or to suppress the competition of independent theatres, or to further any conspiracy or agreement whereby independent theatres are prevented from competing on equal terms of price with the producer and distributor owned or affiliated theatres for the right to exhibit motion picture film. It denies that by reason of the above described "system of release" or its use by this defendant, the Jackson Park Theatre is unable to obtain the license of film from it until the tenth week after the conclusion

of Loop First Run in Chicago. Except as hereinabove expressly admitted, it denies each and every allegation of paragraph 5 of said complaint.

6. It admits that each of the theatres mentioned in paragraph 6 of said complaint is located at the alleged address in Chicago, Illinois and is operated by the defendant named as to each, and has been licensed by it from time to time to exhibit motion picture films which it distributes in the release period alleged, except that it denies that said Tivoli Theatre has been licensed to exhibit any of such films for a number of years last past. Upon information and belief it denies that the respective seating capacities of said theatres are correctly alleged in said paragraph. It has no knowledge or information sufficient to form a belief as to the ownership of any of said theatres. It admits that by virtue of their geographical location and other considerations, said theatres are among the immediate competitors of the Jackson Park Theatre. It denies that the run granted any of said theatres by the terms of any license agreement between it and the operator of said theatre for the exhibition of films which it distributes is discriminatory or arbitrary or discriminates against the business of the Jackson Park Theatre in favor of the defendant exhibitors or either of them.

7. It admits that the defendant Balaban & Katz Corporation operates a number of motion picture theatres in its Chicago Exchange district and upon information and belief admits that Balaban & Katz Corporation is a subsidiary of Paramount Pictures, Inc., a producer and distributor of motion picture film. On information and belief it admits that the defendant Warner Bros. Pictures, Inc., is a producer of motion picture films and is in some manner affiliated with the defendants Warner Brothers Theatres, Inc. and Warner Bros. Circuit Management Corporation, and denies that said Warner Bros. Pictures, Inc. is a distributor of motion picture film. It admits that Warner Bros. Circuit Management Corporation operates a number of motion picture theatres in its Chicago Exchange district. It denies that pursuant to any illegal agreement or conspiracy it refuses to license first run feature pictures for exhibition in the Jackson Park Theatre, except in a week of release non-competitive to the runs granted any and all theatres owned and operated or leased by any of the other defendants or prior to the tenth

week after the conclusion of Loop First Run. It admits that by the terms of certain film license agreements heretofore individually entered into between it and Balaban & Katz Corporation and between it and Warner Bros. Circuit Management Corporation it has granted, with respect to the motion picture films covered by such agreements, priority of run and clearance to certain theatres operated by said defendant exhibitors over the Jackson Park Theatre, whereby said films were not to be exhibited in the Jackson Park Theatre prior to the tenth week after the conclusion of the Loop First Run of said films. Except in accordance with the said provisions of said license agreements, it does not refuse to license the motion picture films which it distributes for exhibition in the Jackson Park Theatre prior to the tenth week after the conclusion of the Loop First Run of said films. It alleges that the run for which it has heretofore licensed the exhibition of its films in the Jackson Park Theatre is competitive to the runs granted by it to a number of the theatres operated by said defendant exhibitors with respect to the same films.

8. It denies that it will not license any feature film for exhibition in the Jackson Park Theatre prior to the first week of general release pursuant to any illegal agreement or conspiracy or in order to destroy the plaintiff's business in competition with distributor owned, controlled, operated or affiliated theatres. It denies that the Jackson Park Theatre is unable to obtain any feature film which it distributes until after such film has been exhibited, or a right to such exhibition refused, by all but one of the theatres competing with the Jackson Park Theatre and owned by either of the defendant exhibitor. It again denies that it is or has been a party to any contract, combination, conspiracy or monopoly in restraint of interstate trade and commerce or in contravention of any of the provisions of the so-called Sherman Antitrust Act or the so-called Clayton Antitrust Act. Except as hereinabove in this paragraph expressly admitted or denied, it has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 8 of said complaint.

9. It denies that the Jackson Park Theatre is a modern theatre in all respects. It admits that said theatre has been engaged in the exhibition of motion picture films since the year 1916. It does not know what is meant by

the allegation in paragraph 10 of said complaint "that it is impossible to operate said theatre profitably unless first-run feature pictures can be obtained on a competitive basis" and it therefore denies said allegation. It denies that the Jackson Park Theatre is or ever was able to compete "on equal terms" as to price and as to playing position and as to clearance with all other theatres in its competitive district, but alleges that the Jackson Park Theatre is and at all times was free to compete, and that it has competed, with all such other theatres for the right to exhibit films distributed by this defendant on such terms as to price, playing position, clearance and other customary provisions of film license agreements as the Jackson Park Theatre and such other theatres respectively have been ready, willing and able to offer and have offered to this defendant. It does not know to what period of time said complaint refers by the phrase "prior to the inception of said unlawful conspiracy" and therefore denies that prior to such time none of the theatres mentioned in said complaint, except the Tivoli and Avalon, played motion pictures on prior release dates to that of the Jackson Park Theatre and denies that prior to such time said Jackson Park Theatre played ahead of the Shore Theatre, the Woodlawn Theatre (now the Maryland Theatre) and the Jeffery Theatre, and denies that prior to such time the Tivoli and Avalon Theatres on a competitive basis enjoyed a release date only one week in advance of the Jackson Park Theatre. It has no knowledge or information sufficient to form a belief as to when, if ever, the said conditions alleged to have prevailed "prior to the inception of the said unlawful conspiracy" prevailed in fact. It admits that pursuant to the terms of certain individually negotiated license agreements heretofore entered into between it and the operator of said Avalon Theatre, said theatre, but not the Tivoli Theatre, has been granted a playing position six weeks ahead of the Jackson Park Theatre. It again denies any and all manner of conspiracy or unlawful agreement with respect to the so-called "system of release" in Chicago and its environs or with respect to any use thereof by it, and denies that it has used said "system" either in combination with the other defendants or any of them, or otherwise, to suppress the competition of the Jackson Park Theatre with the distributor defendants' affiliates. It does not know what is meant by the allegation in paragraph 10

of said complaint that "prior to the inception of said unlawful agreement * * * all of said theatres could play motion pictures immediately following the exhibition of said films in the Chicago Loop, and each theatre was free to compete for any picture, on the basis of price", and it therefore denies such allegation. It denies that there was ever a time when all of the theatres mentioned in plaintiff's complaint could exhibit motion picture films immediately following the exhibition of said films in the Chicago Loop or that there was ever a time when any theatre was free to compete for the right to exhibit this defendant's motion picture films on the basis of price alone, without taking into account all other factors which enter into competition among theatres for licenses to exhibit its films. It denies that there was ever a time when the operator or operators of the Jackson Park Theatre have been unable to obtain motion picture films distributed by it for exhibition in said theatre on a competitive basis. It alleges that any price offered by the operator or operators of the Jackson Park Theatre for a license to exhibit its films has been considered by it as one of the factors entering into the negotiations for such license. It denies that it has ever refused to release films for exhibition in the Jackson Park Theatre until after they have been exhibited by the distributor owned, operated or affiliated competitors of the plaintiffs, except to the extent and in the manner expressly provided in an individually negotiated license agreement with respect to said films between it and one of such competitors. It denies that it, either alone or together with Paramount Pictures, Inc., Loew's, Incorporated, Twentieth Century-Fox Film Corporation, Vitagraph, Inc. and Warner Bros. Pictures, Inc. controls or produces approximately 90% of the production of motion picture films in the United States. It has no knowledge or information sufficient to form a belief as to whether it is possible to operate the Jackson Park Theatre at a profit without licensing motion picture films for exhibition from some one or more of the defendants at release dates competitive with other theatres in the competitive district of plaintiffs' theatre. It denies that at or about the time of the alleged acquisition of the Jackson Park Theatre by the plaintiffs it was combined together with the other defendants or any of them in any conspiracy. It denies that it introduced double features in affiliated theatres competing with the

Jackson Park Theatre. It denies that it owns, operates or controls any theatre competing with the plaintiffs' theatre, except that one Loop First Run theatre in downtown Chicago is operated by a company with which it is affiliated. It denies that it in any way at any time forced the plaintiffs to buy double features. It denies that double features were introduced in any theatres in Chicago or its environs by any concerted action by this defendant and other defendants or any of them. It has no knowledge or information sufficient to form a belief as to whether the introduction of double features increased the cost of exhibiting film in the Jackson Park Theatre. It denies that it has now or ever had any ownership or control of any of the theatres named in the complaint as competitors of the Jackson Park Theatre. It does not know what is meant by the allegation in paragraph 10 of said complaint that "by reason of the other defendants acting in concert with them in consideration of similar reciprocal concerted action in Metropolitan centers other than Chicago, defendants have prevented the plaintiffs from entrance into the vital first run film market", and it therefore denies said allegation. It denies that the Jackson Park Theatre has been relegated by any action on its part to secondary and inferior position in the exhibition of motion picture film or has been compelled by virtue of any unlawful conspiracy to which it is or has been a party to accept films for exhibition after theatres affiliated with defendants were through with them or subject to unfavorable rental terms and conditions of availability, including clearance and zoning. It has no knowledge or information sufficient to form a belief as to the rental terms or conditions of availability, including clearance and zoning, under which the Jackson Park Theatre has exhibited films other than those distributed by it. It denies that the operator or operators of the Jackson Park Theatre have been denied a free, open and untrammeled market in which to license the motion picture films distributed by it but it alleges that their ability and willingness to pay fair and reasonable film rentals is not the only competitive factor in such a free, open and untrammeled market. It denies that it has granted to any competing theatre, either pursuant to any unlawful conspiracy or otherwise, discriminatory or arbitrary clearance or run over the Jackson Park Theatre or that the operator or operators of said theatre have thus

or in any other manner been discriminated against by it in favor of any theatre owned or operated by the defendants Balaban & Katz Corporation, Warner Brothers Theatres, Inc., or Warner Bros. Circuit Management Corporation. It denies that the plaintiffs have been, by virtue of any unlawful conspiracy or otherwise, forced by it to license film under a system of block booking whereby they are forced to contract in advance for a number of films or forced to contract for films sight unseen, or forced to buy short subjects, news reels, serials or reissues which they did not desire to exhibit, as a condition to the licensing by it of feature pictures. Except as hereinabove in this paragraph expressly admitted or denied, it has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 10 of said complaint.

11. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 11 of said complaint, except that it denies that the plaintiffs have been damaged or subjected to any loss of earnings as a result of any unlawful agreement or conspiracy to which it is or has been a party.

12. It denies each and every allegation in paragraph 12 of said complaint.

Wherefore, this defendant denies that plaintiffs are entitled to the relief or any of it demanded in said complaint.

Mayer, Meyer, Austrian & Platt,
Attorneys for RKO Radio Pictures, Inc.,
By Miles G. Seeley,
Miles G. Seeley,
a member of said firm,
231 South LaSalle Street,
Chicago, Illinois.

35 And the same day to wit, the 19th day of January, 1943 came the Defendant, Twentieth Century-Fox Film Corporation, by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

36 In the District Court of the United States.
* * (Caption—4525) * *

ANSWER OF DEFENDANT TWENTIETH CENTURY-FOX FILM CORPORATION.

Mayer, Meyer, Austrian & Platt,
Attorneys for said defendant,
231 South La Salle Street,
Chicago, Illinois.

(Filed Jan. 19, 1943, Roy H. Johnson, Clerk.)

In the District Court of the United States.
* * (Caption—4525) * *

ANSWER OF DEFENDANT TWENTIETH CENTURY-FOX FILM CORPORATION.

Now comes Twentieth Century-Fox Film Corporation, a corporation, one of the defendants herein, by Mayer, Meyer, Austrian & Platt, its attorneys, and answering the complaint of the plaintiff says:

1. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 1 of said complaint, except that it admits that there is a motion picture theatre in Chicago, Illinois known as the Jackson Park Theatre.

2. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 2 of said complaint, except that it admits that it is incorporated under the laws of the State of New York and that it is doing business in and found in the City of Chicago and State of Illinois.

3. It has no knowledge or information sufficient to form a belief as to whether diversity of citizenship of each of

the plaintiffs to each of the defendants exists, and it denies that the controversy involves an amount of money in excess of $3,000.00, exclusive of interests and costs, and it denies that the controversy involves any violation of the Act of July 2, 1890, known as the Sherman Antitrust Act or of the Act of October 15, 1914, known as the Clayton Antitrust Act, as alleged in paragraph 3 of said complaint.

4. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 4 of said complaint, except that it admits that the Jackson Park Theatre is a motion picture theatre located in Chicago, Illinois which has been operated for the exhibition of motion picture films for a period of approximately twenty-five years prior to the date of the filing of the plaintiff's complaint, and it admits that the operator or operators of said theatre during said period has been a licensee of motion picture film produced outside the State of Illinois and transported in interstate commerce.

5. It denies that it is engaged or that it ever has been engaged in a conspiracy with the defendants or any of them to maintain in the City of Chicago or its environs a system of releasing motion picture film for exhibition in such manner that theatres owned, leased or operated by it or any of the defendants or by subsidiaries of any of them, are given preference or priority in the exhibition of motion picture film over independent exhibitors or enjoy prior runs of desirable motion pictures, or enjoy clearance over comparable and competing theatres not owned, controlled, leased, or operated by any of the defendants, and it denies that it is or ever has been engaged in any conspiracy of any nature whatsoever with the defendants or any of them with respect to the distribution or exhibition of motion picture film or with respect to priority of run or clearance between or among any motion picture theatres in the City of Chicago or its environs. It denies that a system of release has been set up or exists by virtue of any agreement or agreements between it and any other defendant or defendants pursuant to the conspiracy alleged in paragraph 5 of said complaint or any conspiracy. It alleges that there has developed in the City of Chicago and its environs by custom and use over a period of many years a so-called "system of release" whereby motion picture films are released for exhibition in successive release periods or "runs", which are customarily referred to as "Loop First

Run", "A Pre-release Weeks", "B Pre-release Weeks", "C Pre-release Week", "First Week of General Release" and subsequent general release weeks. It alleges that said "system" or pattern of release has undergone various changes and modifications in the course of its development over a period of many years, but that at and about the date of the filing of the complaint in this case the term "Loop First Run" as customarily used refers to an exhibition in a motion picture theatre in the downtown or Loop district of Chicago of a motion picture film not previously exhibited in Chicago or its environs; that such exhibition generally takes place in but one such motion picture theatre and continues for a period from one week to several weeks; that each motion picture theatre licensed by a distributor to exhibit a film in the said Loop First Run customarily obtains, by the terms of the license agreement between said distributor and said exhibitor, three weeks' clearance over all other motion picture theatres in Chicago and its environs; that the next exhibitions or runs of films which have been exhibited in Loop First Run customarily take place in the A Pre-release weeks, which are the fourth, fifth and sixth weeks following the termination of Loop First Run; that the next subsequent exhibitions or runs of the same films take place in the B Pre-release weeks, which are the seventh and eighth weeks following the termination of Loop First Run; that the next subsequent exhibitions or runs of the same films take place in C Pre-release week, which is the ninth week following the termination of Loop First Run, and that the subsequent exhibitions or runs of the same films take place in the first and subsequent weeks of general release, commencing with the tenth week following the termination of Loop First Run; that all exhibits or runs of motion picture films in Chicago and its environs subsequent to Loop First Run generally take place simultaneously in two or more motion picture theatres in different parts of said city or its environs; that with respect to the motion picture films distributed by this defendant, the release period or run in which said films are exhibited by any theatre in the City of Chicago or its environs is determined wholly in the terms of the license agreement with respect to said films entered into between this defendant and the operator of any such theatre, without any combination, conspiracy, agreement or concert of action between this defendant and

any other defendant. It denies that the above described "system of release" which has developed in the City of Chicago and its environs has been set up or exists by virtue of any agreement or agreements to which this defendant is or has been a party, except to the extent that in its individual license agreements with operators of motion picture theatres in Chicago and its environs this defendant generally uses the said "system" of release periods or runs and the terminology thereof as a convenient means of describing the time when the exhibitor is thereby licensed to exhibit its motion picture films covered by said license agreement and the priority of run and clearance, if any, accorded the exhibitor by said license agreement over competing theatres with respect to the exhibition of the same films. It denies that the theatres granted desirable runs by it include only theatres owned or operated by one or more of the defendants or controlled by or affiliated with one or more of the defendant distributors, and denies that the above described "system of clearance" is designed or used by it to create unreasonable clearance in favor of distributor controlled or affiliated theatres over independent theatres or to give the more advantageous playing positions or runs to the atheatres owned and operated by or affiliated with any of the defendant distributors or to suppress the competition of independent theatres, or to further any conspiracy or agreement whereby independent theatres are prevented from competing on equal terms of price with the producer and distributor owned or affiliated theatres for the right to exhibit motion picture film. It denies that by reason of the above described "system of release" or its use by this defendant, the Jackson Park Theatre is unable to obtain the license of film from it until the tenth week after the conclusion of Loop First Run in Chicago. Except as hereinabove expressly admitted, it denies each and every allegation of paragraph 5 of said complaint.

6. It admits that each of the theatres mentioned in paragraph 6 of said complaint is located at the alleged address in Chicago, Illinois and is operated by the defendant named as to each, and has been licensed by it from time to time to exhibit motion picture films which it distributes in the release period alleged. Upon information and belief it denies that the respective seating capacities of said theatres are correctly alleged in said paragraph. It has no

knowledge or information sufficient to form a belief as to the ownership of any of said theatres. It admits that by virtue of their geographical location and other considerations, said theatres are among the immediate competitors of the Jackson Park Theatre. It denies that the run granted any of said theatres by the terms of any license agreement between it and the operator of said theatre for the exhibition of films which it distributes is discriminatory or arbitrary or discriminates against the business of the Jackson Park Theatre in favor of the defendant exhibitors or either of them.

7. It admits that the defendant Balaban & Katz Corporation operates a number of motion picture theatres in its Chicago Exchange district and upon information and belief admits that Balaban & Katz Corporation is a subsidiary of Paramount Pictures, Inc., a producer and distributor of motion picture film. On information and belief it admits that the defendant Warner Bros. Pictures, Inc., is a producer of motion picture films and is in some manner affiliated with the defendants Warner Brother Theatres, Inc. and Warner Bros. Circuit Management Corporation, and denies that said Warner Bros. Pictures, Inc. is a distributor of motion picture film. It admits that Warner Bros. Circuit Management Corporation operates a number of motion picture theatres in its Chicago Exchange district. It denies that pursuant to any illegal agreement or conspiracy it refuses to license first run features pictures for exhibition in the Jackson Park Theatre, except in a week of release non-competitive to the runs granted any and all theatres owned and operated or leased by any of the other defendants or prior to the tenth week after the conclusion of Loop First Run. It admits that by the terms of certain film license agreements heretofore individually entered into between it and Balaban & Katz Corporation and between it and Warner Bros. Circuit Management Corporation it has granted, with respect to the motion picture films covered by such agreements, priority of run and clearance to certain theatres operated by said defendant exhibitors over the Jackson Park Theatre, whereby said films were not to be exhibited in the Jackson Park Theatre prior to the tenth week after the conclusion of the Loop First Run of said films. Except in accordance with the said provisions of said license agreements, it does not refuse to license the motion picture films which it dis-

tributes for exhibition in the Jackson Park Theatre prior to the tenth week after the conclusion of the Loop First Run of said films. It alleges that the run for which it has heretofore licensed the exhibition of its films in the Jackson Park Theatre is competitive to the runs granted by it to a number of the theatres operated by said defendant exhibitors with respect to the same films.

8. It denies that it will not license any feature film for exhibition in the Jackson Park Theatre prior to the first week of general release pursuant to any illegal agreement or conspiracy or in order to destroy the plaintiff's business in competition with distributor owned, controlled, operated or affiliated theatres. It denies that the Jackson Park Theatre is unable to obtain any feature film which it distributes until after such film has been exhibited, or a right to such exhibition refused, by all but one of the theatres competing with the Jackson Park Theatre and owned by either of the defendant exhibitors. It again denies that it is or has been a party to any contract, combination, conspiracy or monopoly in restraint of interstate trade and commerce or in contravention of any of the provisions of the so-called Sherman Antitrust Act or the so-called Clayton Antitrust Act. Except as hereinabove in this paragraph expressly admitted or denied, it has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 8 of said complaint.

10. It denies that the Jackson Park Theatre is a modern theatre in all respects. It admits that said theatre has been engaged in the exhibition of motion picture films since the year 1916. It does not know what is meant by the allegation in paragraph 10 of said complaint "that it is impossible to operate said theatre profitably unless first-run feature pictures can be obtained on a competitive basis" and it therefore denies said allegation. It denies that the Jackson Park Theatre is or ever was able to compete "on equal terms" as to price and as to playing position and as clearance with all other theatres in its competitive district, but alleges that the Jackson Park Theatre is and at all times was free to compete, and that it has competed, with all such other theatres for the right to exhibit films distributed by this defendant on such terms as to price, playing position, clearance and other customary provisions of film license agreements as the Jackson Park Theatre and such other theatres respectively have been

ready, willing and able to offer and have offered to this defendant. It does not know to what period of time said complaint refers by the phrase "prior to the inception of said unlawful conspiracy" and therefore denies that prior to such time none of the theatres mentioned in said complaint, except the Tivoli and Avalon, played motion pictures on prior release dates to that of the Jackson Park Theatre and denies that prior to such time said Jackson Park Theatre played ahead of the Shore Theatre, the Woodlawn Theatre (now the Maryland Theatre) and the Jeffery Theatre, and denies that prior to such time the Tivoli and Avalon Theatres on a competitive basis enjoyed a release date only one week in advance of the Jackson Park Theatre. It has no knowledge or information sufficient to form a belief as to when, if ever, the said conditions alleged to have prevailed "prior to the inception of the said unlawful conspiracy" prevailed in fact. It admits that pursuant to the terms of certain individually negotiated license agreements heretofore entered into between it and the operator of said Tivoli Theatre and between it and the operator of said Avalon Theatre, respectively, the said Tivoli Theatre, with respect to certain of the films distributed by it, has been granted a playing position six weeks ahead of the Jackson Park Theatre and the said Avalon Theatre, with respect to certain films, has been granted a playing position five weeks ahead of the Jackson Park Theatre. It again denies any and all manner of conspiracy or unlawful agreement with respect to the so-called "system of release" in Chicago and its environs or with respect to any use thereof by it, and denies that it has used said "system" either in combination with the other defendants or any of them, or otherwise, to suppress the competition of the Jackson Park Theatre with the distributor defendants' affiliates. It does not know what is meant by the allegation in paragraph 10 of said complaint that "prior to the inception of said unlawful agreement * * * all of said theatres could play motion pictures immediately following the exhibition of said films in the Chicago Loop, and each theatre was free to compete for any picture, on the basis of price", and it therefore denies such allegation. It denies that there was ever a time when all of the theatres mentioned in plaintiff's complaint could exhibit motion picture films immediately following the exhibition of said films in the Chicago Loop or that there was ever a time

when any theatre was free to compete for the right to exhibit this defendant's motion picture films on the basis of price alone, without taking into account all other factors which enter into competition among theatres for licenses to exhibit its films. It denies that there was ever a time when the operator or operators of the Jackson Park Theatre have been unable to obtain motion picture films distributed by it for exhibition in said theatre on a competitive basis. It alleges that any price offered by the operator or operators of the Jackson Park Theatre for a license to exhibit its films has been considered by it as one of the factors entering into the negotiations for such license. It denies that it has ever refused to release films for exhibition in the Jackson Park Theatre until after they have been exhibited by the distributor owned, operated or affiliated competitors of the plaintiffs, except to the extent and in the manner expressly provided in an individually negotiated license agreement with respect to said films between it and one of such competitors. It denies that it, either alone or together with Paramount Pictures, Inc., RKO Radio Pictures, Inc., Loew's, Incorporated, Vitagraph, Inc. and Warner Bros. Pictures, Inc. controls or produces approximately 90% of the production of motion picture films in the United States. It has no knowledge or information sufficient to form a belief as to whether it is possible to operate the Jackson Park Theatre at a profit without licensing motion picture films for exhibition from some one or more of the defendants at release dates competitive with other theatres in the competitive district of plaintiffs' theatre. It denies that at or about the time of the alleged acquisition of the Jackson Park Theatre by the plaintiffs it was combined together with the other defendants or any of them in any conspiracy. It denies that it ever introduced double features in affiliated theatres competing with the Jackson Park Theatre or that it ever owned, operated or controlled any theatre competing with the plaintiffs' theatre, or that it in any way at any time forced the plaintiffs to buy double features. It denies that double features were introduced in any theatres in Chicago or its environs by any concerted action by this defendant and other defendants or any of them. It has no knowledge or information sufficient to form a belief as to whether the introduction of double features increased the cost of exhibiting film in the Jackson Park Theatre. It denies that it has

now or ever had any ownership or control of any of the theatres named in the complaint as competitors of the Jackson Park Theatre. It does not know what is meant by the allegation in paragraph 10 of said complaint that "by reason of the other defendants acting in concert with them in consideration of similar reciprocal concerted action in Metropolitan centers other than Chicago, defendants have prevented the plaintiffs from entrance into the vital first run film market", and it therefore denies said allegation. It denies that the Jackson Park Theatre has been relegated by any action on its part to secondary and inferior position in the exhibition of motion picture film or has been compelled by virtue of any unlawful conspiracy to which it is or has been a party to accept films for exhibition after theatres affiliated with defendants were through with them or subject to unfavorable rental terms and conditions of availability, including clearance and zoning. It has no knowledge or information sufficient to form a belief as to the rental terms or conditions of availability, including clearance and zoning, under which the Jackson Park Theatre has exhibited films other than those distributed by it. It denies that the operator or operators of the Jackson Park Theatre have been denied a free, open and untrammeled market in which to license the motion picture films distributed by it but it alleges that their ability and willingness to pay fair and reasonable film rentals is not the only competitive factor in such a free, open and untrammeled market. It denies that it has granted to any competing theatre, either pursuant to any unlawful conspiracy or otherwise, discriminatory or arbitrary clearance or run over the Jackson Park Theatre or that the operator or operators of said theatre have thus or in any other manner been discriminated against by it in favor of any theatre owned or operated by the defendants Balaban & Katz Corporation, Warner Brothers Theatres, Inc., or Warner Bros. Circuit Management Corporation. It denies that the plaintiffs have been, by virtue of any unlawful conspiracy or otherwise, forced by it to license film under a system of block booking whereby they are forced to contract in advance for a number of films or forced to contract for films sight unseen, or forced to buy short subjects, news reels, serials or reissues which they did not desire to exhibit, as a condition to the licensing by it of feature pictures. Except as hereinabove in this

paragraph expressly admitted or denied, it has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 10 of said complaint.

11. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 11 of said complaint, except that it denies that the plaintiffs have been damaged or subjected to any loss of earnings as a result of any unlawful agreement or conspiracy to which it is or has been a party.

12. It denies each and every allegation in paragraph 12 of said complaint.

Wherefore, this defendant denies that plaintiffs are entitled to the relief or any of it demanded in said complaint.

Mayer, Meyer, Austrian & Platt,
Attorneys for Twentieth Century-Fox Film Corporation, by
Miles G. Seeley,
a member of said firm,
231 South La Salle Street,
Chicago, Illinois.

37 And on the same day, to wit, the 19th day of January, 1943, came the Defendant, Loew's Incorporated, by its attorneys and filed in the Clerk's office of said Court its certain Answer, in words and figures following, to wit:

38 In the District Court of the United States.

* * (Caption—4525) * *

ANSWER OF DEFENDANT LOEW'S, INCORPORATED.

(Filed Jan. 19, 1943. Roy H. Johnson, Clerk.)

Mayer, Meyer, Austrian & Platt,
Attorneys for said defendant,
231 South LaSalle Street,
Chicago, Illinois.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

ANSWER OF DEFENDANT LOEW'S, INCORPORATED.

Now comes Loew's, Incorporated, a corporation, one of the defendants herein, by Mayer, Meyer, Austrian & Platt, its attorneys, and answering the complaint of the plaintiff says:

1. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 1 of said complaint, except that it admits that there is a motion picture theatre in Chicago, Illinois known as the Jackson Park Theatre.

2. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 2 of said complaint, except that it admits that it is incorporated under the laws of the State of Delaware and that it is doing business in and found in the City of Chicago and State of Illinois.

3. It has no knowledge or information sufficient to form a belief as to whether diversity of citizenship of each of the plaintiffs to each of the defendants exists, and it denies that the controversy involves an amount of money in excess of $3,000.00, exclusive of interests and costs, and it denies that the controversy involves any violation of the Act of July 2, 1890, known as the Sherman Antitrust Act or of the Act of October 15, 1914, known as the Clayton Antitrust Act, as alleged in paragraph 3 of said complaint.

4. It has no knowledge or information sufficient to form a belief as to the truth of ony of the allegations in paragraph 4 of said complaint, except that it admits that the Jackson Park Theatre is a motion picture theatre located in Chicago, Illinois which has been operated for the exhibition of motion picture film for a period of approximately twenty-five years prior to the date of the filing of the plaintiff's complaint, and it admits that the operator or operators of said theatre during said period has been a licensee of motion picture film produced outside the State of Illinois and transported in interstate commerce.

5. It denies that it is engaged or that it ever has been engaged in a conspiracy with the defendants or any of them to maintain in the City of Chicago or its environs a system of releasing motion picture film for exhibition in such manner that theatres owned, leased or operated by it or any of the defendants or by subsidiaries of any of them, are given preference or priority in the exhibition of motion picture film over independent exhibitors or enjoy prior runs of desirable motion pictures, or enjoy clearance over comparable and competing theatres not owned, controlled, leased or operated by any of the defendants, and it denies that it is or ever has been engaged in any conspriacy of any nature whatsoever with the defendants or any of them with respect to the distribution or exhibition of motion picture film or with respect to priority of run or clearance between or among any motion picture theatres in the City of Chicago or its environs. It denies that a system of release has been set up or exists by virtue of any agreement or agreements between it and any other defendant or defendants pursuant to the conspiracy alleged in paragraph 5 of said complaint or any conspiracy. It alleges that there has developed in the City of Chicago and its environs by custom and usage over a period of many years a so-called "system of release" whereby motion picture films are released for exhibition in successive release periods or "runs", which are customarily referred to as "Loop First Run", "A Pre-release Weeks", "B Pre-release Weeks", "C Pre-release Week", "First week of General Release" and subsequent general release weeks. It alleges that said "system" or pattern of release has undergone various changes and modifications in the course of its development over a period of many years, but that at and about the date of the filing of the complaint in this case the term "Loop First Run" as customarily used refers to an exhibition in a motion picture theatre in the downtown or Loop district of Chicago of a motion picture film not previously exhibited in Chicago or its environs; that such exhibition generally takes place in but one such motion picture theatre and continues for a period from one week to several weeks; that each motion picture theatre licensed by a distributor to exhibit a film in the said Loop First Run customarily obtains, by the terms of the license agreement between said distributor and said exhibitor, three weeks' clearance over all

other motion picture theatres in Chicago and its environs; that the next exhibitions or runs of films which have been exhibited in Loop First Run customarily take place in the A Pre-release weeks, which are the fourth, fifth and sixth weeks following the termination of Loop First Run; that the next subsequent exhibitions or runs of the same films take place in the B Pre-release weeks, which are the seventh and eighth weeks following the termination of Loop First Run; that the next subsequent exhibitions or runs of the same films take place in C Pre-release week, which is the ninth week following the termination of Loop First Run, and that the subsequent exhibitions or runs of the same films take place in the first and subsequent weeks of general release, commencing with the tenth week following the termination of Loop First Run; that all exhibitions or runs of motion picture films in Chicago and its environs subsequent to Loop First Run generally take place simultaneously in two or more motion picture theatres in different parts of said city or its environs; that with respect to the motion picture films distributed by this defendant, the release period or run in which said films are exhibited by any theatre in the City of Chicago or its environs is determined wholly by the terms of the license agreement with respect to said films entered into between this defendant and the operator of any such theatre, without any combination, conspiracy, agreement or concert of action between this defendant and any other defendant. It denies that the above described "system of release" which has developed in the City of Chicago and its environs has been set up or exists by virtue of any agreement or agreements to which this defendant is or has been a party, except to the extent that in its individual license agreements with operators of motion picture theatres in Chicago and its environs this defendant generally uses the said "system" of release periods or runs and the terminology thereof as a convenient means of describing the time when the exhibitor is thereby licensed to exhibit its motion picture films covered by said license agreement and the priority of run and clearance, if any, accorded the exhibitor by said license agreement over competing theatres with respect to the exhibition of the same films. It denies that the theatres granted desirable runs by it include only theatres owned or operated by one or more of the defendants or controlled by or affiliated

with one or more of the defendant distributors, and denies that the above described "system of clearance" is designed or used by it to create unreasonable clearance in favor of distributor controlled or affiliated theatres over independent theatres or to give the more advantageous playing positions or runs to the theatres owned and operated by or affiliated with any of the defendant distributors or to suppress the competition of independent theatres, or to further any conspiracy or agreement whereby independent theatres are prevented from competing on equal terms of price with the producer and distributor owned or affiliated theatres for the right to exhibit motion picture film. It denies that by reason of the above described "system of release" or its use by this defendant, the Jackson Park Theatre is unable to obtain the license of film from it until the tenth week after the conclusion of Loop First Run in Chicago. Except as hereinabove expressly admitted, it denies each and every allegation of paragraph 5 of said complaint.

6. It admits that each of the theatres mentioned in paragraph 6 of said complaint is located at the alleged address in Chicago, Illinois and is operated by the defendant named as to each, and has been licensed by it from time to time to exhibit motion picture films which it distributes in the release period alleged. Upon information and belief it denies that the respective seating capacities of said theatres are correctly alleged in said paragraph. It has no knowledge or information sufficient to form a belief as to the ownership of any of said theatres. It admits that by virtue of their geographical location and other considerations, said theatres are among the immediate competitors of the Jackson Park Theatre. It denies that the run granted any of said theatres by the terms of any license agreement between it and the operator of said theatre for the exhibition of films which it distributes is discriminatory or arbitrary or discriminates against the business of the Jackson Park Theatre in favor of the defendant exhibitors or either of them.

7. It admits that the defendant Balaban & Katz Corporation operates a number of motion picture theatres in its Chicago Exchange district and upon information and belief admits that Balaban & Katz Corporation is a subsidiary of Paramount Pictures, Inc., a producer and distributor of motion picture film. On information and belief it admits that the defendant Warner Bros. Pictures, Inc.,

is a producer of motion picture films and is in some manner affiliated with the defendants Warner Brothers Theatres, Inc. and Warner Bros. Circuit Management Corporation, and denies that said Warner Bros. Pictures, Inc. is a distributor of motion picture film. It admits that Warner Bros. Circuit Management Corporation operates a number of motion picture theatres in its Chicago Exchange district. It denies that pursuant to any illegal agreement or conspiracy it refuses to license first run feature pictures for exhibition in the Jackson Park Theatre, except in a week of release non-competitive to the runs granted any and all theatres owned and operated or leased by any of the other defendants or prior to the tenth week after the conclusion of Loop First Run. It admits that by the terms of certain film license agreements heretofore individually entered into between it and Balaban & Katz Corporation and between it and Warner Bros. Circuit Management Corporation it has granted, with respect to the motion picture films covered by such agreements, priority of run and clearance to certain theatres operated by said defendant exhibitors over the Jackson Park Theatre, whereby said films were not to be exhibited in the Jackson Park Theatre prior to the tenth week after the conclusion of the Loop First Run of said films. Except in accordance with the said provisions of said license agreements, it does not refuse to license the motion picture films which it distributes for exhibition in the Jackson Park Theatre prior to the tenth week after the conclusion of the Loop First Run of said films. It alleges that the run for which it has heretofore licensed the exhibition of its films in the Jackson Park Theatre is competitive to the runs granted by it to a number of the theatres operated by said defendant exhibitors with respect to the same films.

8. It denies that it will not license any feature film for exhibition in the Jackson Park Theatre prior to the first week of general release pursuant to any illegal agreement or conspiracy or in order to destroy the plaintiff's business in competition with distributor owned, controlled, operated or affiliated theatres. It denies that the Jackson Park Theatre is unable to obtain any feature film which it distributes until after such film has been exhibited, or a right to such exhibition refused, by all but one of the theatres competing with the Jackson Park Theatre and owned by either of the defendant exhibitor. It again denies that it

is or has been a party to any contract, combination, conspiracy or monopoly in restraint of interstate trade and commerce or in contravention of any of the provisions of the so-called Sherman Antitrust Act or the so-called Clayton Antitrust Act. Except as hereinabove in this paragraph expressly admitted or denied, it has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 8 of said complaint.

10. It denies that the Jackson Park Theatre is a modern theatre in all respects. It admits that said theatre has been engaged in the exhibition of motion picture films since the year 1916. It does not know what is meant by the allegation in paragraph 10 of said complaint "that it is impossible to operate said theatre profitably unless first-run feature pictures can be obtained on a competitive basis" and it therefore denies said allegation. It denies that the Jackson Park Theatre is or ever was able to compete "on equal terms" as to price and as to playing position and as to clearance with all other theatres in its competitive district, but alleges that the Jackson Park Theatre is and at all times was free to compete, and that it has competed, with all such other theatres for the right to exhibit films distributed by this defendant on such terms as to price, playing position, clearance and other customary provisions of film license agreements as the Jackson Park Theatre and such other theatres respectively have been ready, willing and able to offer and have offered to this defendant. It does not know to what period of time said complaint refers by the phrase "prior to the inception of said unlawful conspiracy" and therefore denies that prior to such time none of the theatres mentioned in said complaint, except the Tivoli and Avalon, played motion pictures on prior release dates to that of the Jackson Park Theatre and denies that prior to such time said Jackson Park Theatre played ahead of the Shore Theatre, the Woodlawn Theatre (now the Maryland Theatre) and the Jeffrey Theatre, and denies that prior to such time the Tivoli and Avalon Theatres on a competitive basis enjoyed a release date only one week in advance of the Jackson Park Theatre. It has no knowledge or information sufficient to form a belief as to when, if ever, the said conditions alleged to have prevailed "prior to the inception of the said unlawful conspiracy" prevailed in fact. It admits that pursuant to the terms of certain individually

negotiated license agreements heretofore entered into between it and the operator of said Tivoli Theatre and between it and the operator of said Avalon Theatre, respectively, the said Tivoli Theatre, with respect to certain of the films distributed by it, has been granted a playing position six weeks ahead of the Jackson Park Theatre and the said Avalon Theatre, with respect to certain films, has been granted a playing position five weeks ahead of the Jackson Park Theatre. It again denies any and all manner of conspiracy or unlawful agreement with respect to the so-called "system of release" in Chicago and its environs or with respect to any use thereof by it, and denies that it has used said "system" either in combination with the other defendants or any of them, or otherwise, to suppress the competition of the Jackson Park Theatre with the distributor defendants' affiliates. It does not know what is meant by the allegation in paragraph 10 of said complaint that "prior to the inception of said unlawful agreement * * * all of said theatres could play motion pictures immediately following the exhibition of said films in the Chicago Loop, and each theatre was free to compete for any picture, on the basis of price", and it therefore denies such allegation. It denies that there was ever a time when all of the theatres mentioned in plaintiff's complaint could exhibit motion picture films immediately following the exhibition of said films in the Chicago Loop or that there was ever a time when any theatre was free to compete for the right to exhibit this defendant's motion picture films on the basis of price alone, without taking into account all other factors which enter into competition among theatres for licenses to exhibit its films. It denies that there was ever a time when the operator or operators of the Jackson Park Theatre have been unable to obtain motion picture films distributed by it for exhibition in said theatre on a competitive basis. It alleges that any price offered by the operator or operators of the Jackson Park Theatre for a license to exhibit its films has been considered by it as one of the factors entering into the negotiations for such license. It denies that it has ever refused to release films for exhibition in the Jackson Park Theatre until after they have been exhibited by the distributor owned, operated or affiliated competitors of the plaintiffs, except to the extent and in the manner expressly provided in an individually negotiated license agreement with respect to said films between it and one of such competitors. It denies that it, either

alone or together with Paramount Pictures, Inc., RKO Radio Pictures, Inc., Twentieth Century-Fox Film Corporation, Vitagraph, Inc. and Warner Bros. Pictures, Inc. controls or produces approximately 90% of the production of motion picture films in the United States. It has no knowledge or information sufficient to form a belief as to whether it is possible to operate the Jackson Park Theatre at a profit without licensing motion picture films for exhibition from some one or more of the defendants at release dates competitive with other theatres in the competitive district of plaintiffs' theatre. It denies that at or about the time of the alleged acquisition of the Jackson Park Theatre by the plaintiffs it was combined together with the other defendants or any of them in any conspiracy. It denies that it ever introduced double features in affiliated theatres competing with the Jackson Park Theatre or that it ever owned, operated or controlled any theatre competing with the plaintiffs' theatre, or that it in any way at any time forced the plaintiffs to buy double features. It denies that double features were introduced in any theatres in Chicago or its environs by any concerted action by this defendant and other defendants or any of them. It has no knowledge or information sufficient to form a belief as to whether the introduction of double features increased the cost of exhibiting film in the Jackson Park Theatre. It denies that if has now or ever had any ownership or control of any of the theatres named in the complaint as competitors of the Jackson Park Theatre. It does not know what is meant by the allegation in paragraph 10 of said complaint that "by reason of the other defendants acting in concert with them in consideration of similar reciprocal concerted action in Metropolitan centers other than Chicago, defendants have prevented the plaintiffs from entrance into the vital first run film market", and it therefore denies said allegation. It denies that the Jackson Park Theatre has been relegated by any action on its part to secondary and inferior position in the exhibition of motion picture film or has been compelled by virtue of any unlawful conspiracy to which it is or has been a party to accept films for exhibition after theatres affiliated with defendants were through with them or subject to unfavorable rental terms and conditions of availability, including clearance and zoning. It has no knowledge or information sufficient to form a belief as to the rental terms or conditions of availability, including clearance and zoning, under

which the Jackson Park Theatre has exhibited films other than those distributed by it. It denies that the operator or operators of the Jackson Park Theatre have been denied a free, open and untrammeled market in which to license the motion picture films distributed by it but it alleges that their ability and willingness to pay fair and reasonable film rentals is not the only competitive factor in such a free, open and untrammeled market. It denies that it has granted to any competing theatre, either pursuant to any unlawful conspiracy or otherwise, discriminatory or arbitrary clearance or run over the Jackson Park Theatre or that the operator or operators of said theatre have thus or in any other manner been discriminated against by it in favor of any theatre owned or operated by the defendants Balaban & Katz Corporation, Warner Brothers Theatres, Inc., or Warner Bros. Circuit Management Corporation. It denies that the plaintiffs have been, by virtue of any lawful conspiracy or otherwise, forced by it to license film under a system of block booking whereby they are forced to contract in advance for a number of films or forced to contract for films sight unseen, or forced to buy short subjects, news reels, serials or reissues which they did not desire to exhibit, as a condition to the licensing by it of feature pictures. Except as hereinabove in this paragraph expressly admitted or denied, it has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 10 of said complaint.

11. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in paragraph 11 of said complaint, except that it denies that the plaintiffs have been damaged or subjected to any loss of earnings as a result of any unlawful agreement or conspiracy to which it is or has been a party.

12. It denies each and every allegation in paragraph 12 of said complaint.

Wherefore, this defendant denies that plaintiffs are entitled to the relief or any of it demanded in said complaint.

Mayer, Meyer, Austrian & Platt,
Attorneys for Loew's, Incorporated,
by Miles G. Seeley.
Miles G. Seeley,
a member of said firm.
231 South La Salle Street,
Chicago, Illinois.

39 And afterwards on, to wit, the 20th day of January, 1943, came the Defendant, Paramount Pictures, Inc. by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

40 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

Answer of Defendant, Paramount Pictures, Inc.

Spitz and Adcock,
Attorneys for Paramount Pictures, Inc.,
By Edmund Adcock,
33 North La Salle Street,
Chicago, Illinois.
Telephone: Dearborn 8700.

Endorsed: Filed Jan. 20, 1943, at 4:10 o'clock P. M. Roy H. Johnson, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

ANSWER OF DEFENDANT, PARAMOUNT PICTURES, INC.

Now comes Paramount Pictures, Inc., a corporation, one of the defendants herein, by Spitz and Adcock, its attorneys, and, answering the complaint of the plaintiff, says:

1. This defendant has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in Paragraph 1 of said complaint, and therefore it denies the same, except that it admits that there is a motion picture theatre known as the Jackson Park Theatre located in Chicago, Illinois.

2. This defendant admits that it is incorporated under the laws of the State of New York and that Balaban & Katz Corporation is a corporation incorporated under the laws of the State of Delaware and that this defendant and said Balaban & Katz Corporation are doing business

in and can be found in the City of Chicago and State of Illinois. This defendant has no knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 2 of the complaint and therefore it denies the same.

3. This defendant has no knowledge or information sufficient to form a belief as to the citizenship of the plaintiffs or any of them, or as to the citizenship of the defendants other than this defendant and Balaban & Katz Corporation, and therefore it denies that there is diversity of citizenship of each of the plaintiffs to each of the defendants. This defendant denies that the controversy involves an amount of money in excess of $3,000.00 exclusive of interest and costs, and it denies that the controversy involves a violation of the act of July 2, 1890 known as the "Sherman Anti-Trust Act" or the act of October 15, 1914 known as the "Clayton Anti-Trust Act" as alleged in Paragraph 3 of the complaint.

4. This defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the complaint, and therefore it denies the same, except that this defendant admits that the Jackson Park Theatre is a motion picture theatre located in Chicago, Illinois and that the said Jackson Park Theatre has been operated for the exhibition of motion picture film for approximately 25 years prior to the filing of the complaint herein, and it admits further that during the said period, the operator or operators of said theatre have licensed some motion picture films produced outside the State of Illinois and transported in interstate commerce. This defendant denies that the plaintiffs or any of them are engaged in interstate commerce.

5. This defendant denies that it is engaged or has ever been engaged in a conspiracy with the other defendants or any of them to maintain in the City of Chicago and its environs a system of releasing motion picture film for exhibition in such a manner that theatres owned, leased and operated by the defendants or any of them or by the subsidiaries of any of them, are given preference or priority in the exhibition of moving picture film over independent exhibitors or enjoy prior runs of desirable motion pictures or enjoy clearance over comparable and competing theatres not owned or controlled, leased or operated by any of the defendants, and it denies that it is now or has ever been

a party to any agreement with the other defendants or any of them to set up such a system of release, either pursuant to the alleged conspiracy or otherwise.

This defendant alleges that over a period of many years, by custom and usage, and as a result of competition, a so-called "system of release" has developed, pursuant to which motion pictures are released for exhibition in successive release periods or "runs" which are customarily called "Loop First Run," "A Pre Release Weeks," "B Pre Release Weeks," "C Pre Release Week," "First Week of General Release," "Second Week of General Release" and subsequent general release weeks.

At or about the date of the filing of the complaint, under the so-called "system of release" motion pictures were first exhibited in Chicago and its environs in a motion picture theatre located in the downtown or "Loop" district of Chicago. This first exhibition is termed "Loop First Run," and almost invariably this first exhibition takes place in only one motion picture theatre and continues for one week or more. The theatre exhibiting a motion picture on "Loop First Run" usually contracts for and receives three weeks of clearance over all other theatres in Chicago and its environs. The next runs of pictures take place in the "A Pre Release Weeks" which are the 4th, 5th and 6th weeks following the termination of Loop First Run. The next runs of pictures take place in the "B Pre Release Weeks," which are the 7th and 8th weeks following the termination of the Loop First Run. The next run of pictures takes place in the "C Pre Release Week," which is the 9th week following the termination of Loop First Run. The next run of pictures takes place in "First Week of General Release" which is the 10th week following the termination of Loop First Run. Thereafter follow other runs in second week of general release, 3rd week of general release, etc. All runs subsequent to the Loop First Run generally take place simultaneously in two or more motion picture theatres in different parts of Chicago.

The runs on which this defendant licenses its motion pictures to operators of motion picture theatres and the clearances granted to each are determined by separate negotiation with the operators of such theatres, which runs and clearances are customarily set forth in the license agreements entered into between this defendant and the operators of motion picture theatres.

This defendant denies that it has ever designed or used the "system of release" above described or any other "system of release" to create unreasonable clearances in favor of any distributor controlled or affiliated theatres over independent theatres or to give the more advantageous playing positions or "runs" to the theatres operated by or affiliated with this distributor or any of the other defendant distributors, or to suppress the competition of so-called "independent theatres" or to prevent the so-called "independent theatres" from competing on equal terms with the theatres owned or affiliated with this distributor or any other distributor defendant.

This defendant denies that by virtue of the system of release hereinabove described or its use by this defendant the Jackson Park Theatre is unable to obtain the license of film from it until the tenth week after the conclusion of the Loop First Run in Chicago.

Except as hereinabove expressly admitted, this defendant denies each and every allegation contained in Paragraph 5 of the complaint.

6. This defendant admits that the theatres described in Paragraph 6 of the complaint are located at the addresses set forth in the complaint. It admits that the Tivoli, Tower and Maryland Theatres are operated by Balaban & Katz Corporation, it also admits that the Jeffrey, Avalon, Shore and Grove Theatres are operated by Warner Brothers Theatres, Inc., or by companies affiliated with it. It alleges that the seating capacity of the Tivoli is 3420 seats, of the Tower is 3013 seats, of the Maryland 1594 seats. It has no positive knowledge as to the seating capacity of the other theatres referred to in Paragraph 6 of the complaint. It admits that it has licensed its motion pictures from time to time to the theatres named in Paragraph 6 of the complaint in the release periods specified in the complaint, but it alleges that the Tivoli Theatre has from time to time played pictures in Second A Pre Release Week and the Avalon Theatre has from time to time played pictures in Third A Pre Release Week.

This defendant denies that the runs granted by this defendant to any of the theatres named in Paragraph 6 have been discriminatory or arbitrary or discriminated against the business of the plaintiffs in favor of the defendant exhibitors.

This defendant admits that the theatres named in Para-

graph 6 of the complaint are competitive to the Jackson Park Theatre, but it alleges that there are many other theatres which are competitive to the Jackson Park Theatre which are not named in the complaint.

7. This defendant admits that the defendant, Balaban & Katz Corporation, operates a number of motion picture theatres in its Chicago exchange district. It alleges that the total number of issued shares of stock of Balaban & Katz Corporation is 264,206 and that this defendant owns 258,237 shares of such stock. This defendant admits that it produces and distributes motion picture film. On information and belief this defendant admits that the defendant, Warner Bros. Pictures, Inc., is a producer of motion picture film and that it is affiliated with the defendants, Warner Bros. Theatres, Inc., and Warner Bros. Circuit Management Corporation, but denies that Warner Bros. Pictures, Inc., is a distributor of motion picture film. This defendant admits that Warner Bros. Circuit Management Corporation operates a number of motion picture theatres in its Chicago Exchange district.

This defendant denies that pursuant to any illegal agreement or conspiracy it refuses to license "first run" feature pictures to the plaintiffs, except in a week of release non-competitive to the runs granted any and all theatres owned and operated or leased by any of the other defendants or prior to the tenth week after the conclusion of the Loop First Run.

This defendant admits that it has entered into separately negotiated license agreements in the ordinary course of business with Balaban & Katz Corporation and Warner Bros. Circuit Management Corporation pursuant to which it has granted, with respect to the motion pictures covered by these agreements priority of run and clearance to certain theatres operated by said defendants over the Jackson Park Theatre, pursuant to the provisions of which agreements this defendant has licensed motion pictures to the Jackson Park Theatre in first week of general release, which is the tenth week after Loop First Run. This defendant alleges that, subject to the provisions of said agreements, it has never, and does not now, refuse to license the motion picture films which it distributes for exhibitions in the Jackson Park Theatre prior to the tenth week after the conclusion of the Loop First Run of said films.

8. This defendant denies that it has refused to license

any feature film for exhibition in the Jackson Park Theatre prior to the first week of general release pursuant to any illegal agreement or conspiracy or in order to destroy the plaintiffs' business in competition with distributor owned, controlled, operated or affiliated theatres. This defendant denies that the Jackson Park Theatre is unable to obtain any feature film for exhibition until after each film has been exhibited or the right to such exhibition refused by all but one of the theatres competing with the Jackson Park Theatre and owned by either of the defendant exhibitors. This defendant denies that it is now, or that it has ever been, a party to any contract, combination, conspiracy or monopoly in restraint of interstate trade and commerce, or in violation of the so-called Sherman Anti-Trust Act or Clayton Anti-Trust Act. Except as hereinabove in this Paragraph expressly admitted or denied this defendant has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 8 of said complaint and therefore it denies the same.

10. This defendant denies that the Jackson Park Theatre is a modern theatre in all respects. It admits that the said theatre has been engaged in the exhibition of motion picture films since approximately the year 1916, but it has no knowledge or information as to whether it has been operated continuously. It is unable to determine what is meant by the allegation in paragraph 10 of the complaint to the effect that it is impossible to operate the Jackson Park Theatre profitably unless "First Run" feature pictures can be obtained on a competitive basis, and therefore it denies this allegation.

This defendant denies that it has been a party to any conspiracies which have resulted in the Jackson Park Theatre being unable to compete on equal terms as to price and as to playing position and as to clearance with all other theatres in its competitive district. It is unable to determine from the complaint when the alleged conspiracy is alleged to have been entered into and it therefore denies that prior to the inception of the alleged conspiracy none of the theatres mentioned in the complaint except the Tivoli and Avalon, played motion pictures on prior release dates to that of the plaintiffs' theatre, and it denies that prior to such time said Jackson Park Theatre played ahead of the Shore Theatre, the Woodlawn

Theatre, which now is the Maryland Theatre, and the Jeffrey Theatre, and it denies that prior to such time the Tivoli and Avalon Theatres enjoyed a release date only one week in advance of the Jackson Park Theatre. This defendant has no knowledge or information sufficient to form a belief as to when, if ever, the said conditions which are alleged to have prevailed "prior to the inception of the said unlawful conspiracy" prevailed in fact. This defendant admits that it has from time to time licensed its motion pictures to the Tivoli Theatre in "A Pre-Release Weeks" which is the 4th, 5th or 6th week after Loop First Run and that it has licensed its motion pictures from time to time to the Avalon Theatre in second or third A Pre Release Weeks which are the 5th or 6th week after Loop First Run and that it has from time to time licensed its motion pictures to the Jackson Park Theatre in First Week of General Release which is the 10th week after Loop First Run.

This defendant denies that it has entered into any unlawful agreement with respect to the so-called "system of release" hereinabove described and it denies that it has used any "system of release" or that it has entered into any agreement to suppress the competition of the plaintiffs' theatre with the theatres of the distributor defendants' affiliates. This defendant denies that there was ever a time when all the theatres mentioned in plaintiffs' complaint could exhibit motion picture films immediately following the exhibition of said films in the Chicago Loop or that there was ever a time when any theatre was free to compete for any of this defendants' pictures on the basis of price alone, without consideration of the other factors which enter into the competition of theatres to license the films of this distributor.

This defendant denies that the plaintiffs have, since they acquired the Jackson Park Theatre, been unable to obtain film from it on a competitive basis. It alleges that this defendant has always taken the price offered to it by the operators of the Jackson Park Theatre into consideration as one of the factors entering into the negotiations for the license of motion picture films. It denies that it has ever refused to release films for exhibition in the Jackson Park Theatre until after they have been exhibited by the distributor owned, operated or affiliated competitors of the plaintiffs, except in compliance with the provisions of spe-

cific contracts between this distributor and the operator of a theatre competitive to the plaintiffs' theatre relating to specific pictures.

This defendant denies that the distributor defendants together control approximately 90% of the production of motion picture film in the United States. This defendant has no knowledge or information sufficient to form a belief as to whether it is possible to operate the Jackson Park Theatre at a profit without licensing motion picture films for exhibition from some one or more of the defendants at release dates competitive with other theatres in the competitive district of plaintiffs' theatre.

This defendant denies that at the time the Jackson Park Theatre was acquired by the plaintiffs it was combined together with the other defendants or any of them. It denies that it conspired with the defendants or any of them to introduce "double features" in its own affiliated theatres competing with the plaintiffs' theatre or to force the plaintiffs to buy double features, and it denies that it ever forced the plaintiffs to buy double features. It denies that double features were introduced in any theatres in Chicago by any concerted action by this defendant with the other defendants or any of them. This defendant has no knowledge or information sufficient to form a belief as to whether the introduction of double features in the Jackson Park Theatre increased the cost of exhibiting film in the plaintiffs' theatre. It denies that by reason of the other defendants acting in concert with it in consideration of similar reciprocal concerted action in metropolitan centers other than Chicago, it has prevented plaintiffs from entrance to the so-called vital "first run" film market. It denies that the plaintiffs have been relegated to a secondary and inferior position in the exhibition of motion picture film by virtue of any act of this defendant and it further denies that this defendant has been a party to any unlawful conspiracy to compel the plaintiffs to accept pictures for exhibition after the theatres affiliated with the defendants or any of them were through with them, or subject to unfavorable rental terms or conditions of availability, clearance or zoning. This defendant denies that the plaintiffs have been denied a free, open and untrammeled market in which to license the motion pictures of this defendant and it alleges that this defendant has always considered, in licensing its motion pictures, the ability and willingness of the plaintiffs

and of all other theatres to pay fair and reasonable film rentals as one factor in the negotiations with respect to the licensing of motion picture films. This defendant denies that it has granted to any competing theatre any unreasonable, discriminatory or arbitrary clearance or run over the Jackson Park Theatre and this defendant denies that it has discriminated against the Jackson Park Theatre in favor of the theatres owned by the defendants Balaban & Katz Corporation, Warner Bros. Theatres, Inc., or Warner Bros. Circuit Management Corporation. This defendant denies that it has entered into any conspiracy to force the plaintiffs to buy film under a system of "block booking" whereby they are forced to contract in advance for a number of films or forced to contract for films "sight unseen" or forced to buy short subjects, news reels, serials or reissues, which they did not desire to exhibit as a condition to the licensing by this defendant of feature pictures to the plaintiffs.

Except as hereinabove in this paragraph expressly admitted or denied this defendant has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 10 of said complaint and therefore it denies the same.

11. This defendant has no knowledge or information sufficient to enable it to form a belief as to the truth of any of the allegations contained in paragraph 11 of the complaint and therefore it denies the same. This defendant denies specifically that the plaintiffs have been damaged or subjected to any loss of earnings as a result of any unlawful agreement or conspiracy to which this defendant is or has been a party.

12. This defendant denies each and every allegation contained in paragraph 12 of the complaint.

Wherefore, this defendant denies that the plaintiffs are entitled to the relief or any of it demanded in said complaint.

Spitz and Adcock,
Attorneys for Paramount Pictures, Inc.,
By Edmund D. Adcock,
33 North LaSalle Street,
Chicago, Illinois.
Telephone: Dearborn 8700.

41 And on the same day, to wit, the 20th day of January, 1943, came the Defendant, Balaban & Katz Corporation by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

42 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—4525) * *

ANSWER OF DEFENDANT, BALABAN & KATZ CORPORATION.

(Filed Jan. 20, 1943, at 4:10 o'clock P.M. Roy H. Johnson, Clerk.)

Spitz and Adcock,
Attorneys for Balaban & Katz Corporation,
By Edmund Adcock,
33 North La Salle Street,
Chicago, Illinois.
Telephone: Dearborn 8700.

IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—4525) * *

ANSWER OF DEFENDANT, BALABAN & KATZ CORPORATION.

Now comes Balaban & Katz Corporation, a corporation, one of the defendants herein, by Spitz and Adcock, its attorneys, and, answering the complaint of the plaintiff, says:

1. This defendant has no knowledge or information sufficient to form a belief as to the truth of any of the allegations in Paragraph 1 of said complaint, and therefore it denies the same, except that it admits that there is a motion picture theatre known as the Jackson Park Theatre located in Chicago, Illinois.

2. This defendant admits that it is incorporated under the laws of the State of Delaware, and that Paramount Pictures, Inc. is a corporation incorporated under the laws

of the State of New York, and that this defendant and Paramount Pictures, Inc. are doing business in and can be found in the City of Chicago and State of Illinois. This defendant has no knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 2 of the complaint and therefore it denies the same.

3. This defendant has no knowledge or information sufficient to form a belief as to the citizenship of the plaintiffs or any of them, or as to the citizenship of the defendants other than this defendant and Paramount Pictures, Inc., and therefore it denies that there is diversity of citizenship of each of the plaintiffs to each of the defendants. This defendant denies that the controversy involves an amount of money in excess of $3,000.00 exclusive of interest and costs, and it denies that the controversy involves a violation of the act of July 2, 1890 known as the "Sherman Anti-Trust Act" or the act of October 15, 1914 known as the "Clayton Anti-Trust Act" as alleged in Paragraph 3 of the complaint.

4. This defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the complaint, and therefore it denies the same, except that this defendant admits that the Jackson Park Theatre is a motion picture theatre located in Chicago, Illinois and that the said Jackson Park Theatre has been operated for the exhibition of motion picture film for approximately 25 years prior to the filing of the complaint herein, and it admits further that during the said period, the operator or operators of said theatre have licensed some motion picture films produced outside the State of Illinois and transported in interstate commerce. This defendant denies that the plaintiffs or any of them are engaged in interstate commerce.

5. This defendant denies that it is engaged or has ever been engaged in a conspiracy with the other defendants or any of them to maintain in the City of Chicago and its environs a system of releasing motion picture film for exhibition in such a manner that theatres owned, leased and operated by the defendants or any of them or by the subsidiaries of any of them, are given preference or priority in the exhibition of moving picture film over independent exhibitors or enjoy prior runs of desirable motion pictures or enjoy clearance over comparable and competing

theatres not owned or controlled, leased or operated by any of the defendants, and it denies that it is now or has ever been a party to any agreement with the other defendants or any of them to set up such a system of release, either pursuant to the alleged conspiracy or otherwise.

This defendant alleges that over a period of many years, by custom and usage, and as a result of competition, a so-called "system of release" has developed, pursuant to which motion pictures are released for exhibition in successive release periods or "runs" which are customarily called "Loop First Run," "A Pre-Release Weeks," "B Pre-Release Weeks," "C Pre-Release Week," "First Week of General Release," "Second Week of General Release" and subsequent general release weeks.

At or about the date of the filing of the complaint, under the so-called "system of release" motion pictures were first exhibited in Chicago and its environs in a motion picture theatre located in the downtown or "Loop" district of Chicago. This first exhibition is termed "Loop First Run," and almost invariably this first exhibition takes place in only one motion picture theatre and continues for one week or more. The theatre exhibiting a motion picture on "Loop First Run" usually contracts for and receives three weeks of clearance over all other theatres in Chicago and its environs. The next runs of pictures take place in the "A Pre Release Weeks" which are the 4th, 5th and 6th weeks following the termination of Loop First Run. The next runs of pictures take place in the "B Pre Release Weeks," which are the 7th and 8th weeks following the termination of the Loop First Run. The next run of pictures takes place in the "C Pre Release Week," which is the 9th week following the termination of Loop First Run. The next run of pictures takes place in "First Week of General Release" which is the 10th week following the termination of Loop First Run. Thereafter follow other runs in second week of general release, 3rd week of general release, etc. All runs subsequent to the Loop First Run generally take place simultaneously in two or more motion picture theatres in different parts of Chicago.

The runs on which this defendant licenses its pictures from distributors of motion pictures and the clearances granted to the theatres of this defendant are determined by separate negotiation with each distributor, which runs and clearances are customarily set forth in the license

agreements entered into between this defendant and the distributors of motion pictures.

This defendant denies that it has ever designed or used the "system of release" above described or any other "system of release" to create unreasonable clearances in favor of its theatres or in favor of any distributor controlled or affiliated theatres over independent theatres, or to give the more advantageous playing positions or "runs" to the theatres operated by or affiliated with this defendant or to any theatres operated by or affiliated with any of the defendant distributors, or to suppress the competition of so-called "independent theatres" or to prevent the so-called "independent theatres" from competing on equal terms with the theatres owned or affiliated with this defendant or with any of the distributor defendants.

This defendant denies that by virtue of the system of release hereinabove described or its use by this defendant the Jackson Park Theatre is unable to obtain the license of film until the tenth week after the conclusion of the Loop First Run in Chicago.

Except as hereinabove expressly admitted, this defendant denies each and every allegation contained in Paragraph 5 of the complaint.

6. This defendant admits that the theatres described in Paragraph 6 of the complaint are located at the addresses set forth in the complaint. It admits that the Tivoli, Tower and Maryland Theatres are operated by this defendant, it also admits that the Jeffery, Avalon, Shore and Grove Theatres are operated by Warner Brothers Theatres, Inc., or by companies affiliated with it. It alleges that the seating capacity of the Tivoli is 3420 seats, of the Tower is 3013 seats, of the Maryland, 1594 seats. It has no positive knowledge as to the seating capacity of the other theatres referred to in Paragraph 6 of the complaint. It admits that motion pictures have been exhibited by the theatres named in Paragraph 6 of the complaint in the release periods specified in the complaint, but it alleges that the Tivoli Theatre has from time to time played pictures in Second A Pre Release Week and the Avalon Theatre has from time to time played pictures in Third A Pre Release Week.

This defendant denies that the runs granted by the distributor defendants to any of the theatres named in Paragraph 6 have been discriminatory or arbitrary or dis-

criminated against the business of the plaintiffs in favor of the defendant exhibitors.

This defendant admits that the theatres named in Paragraph 6 of the complaint are competitive to the Jackson Park Theatre, but it alleges that there are many other theatres which are competitive to the Jackson Park Theatre which are not named in the complaint.

7. This defendant admits that it operates a number of motion picture theatres in the Chicago Exchange Districts of the defendant distributors. It alleges that the total number of issued shares of stock of this defendant, Balaban & Katz Corporation, is 264,206 and that Paramount Pictures, Inc., owns 258,237 shares of such stock. This defendant admits that Paramount Pictures, Inc., is a producer and distributor of motion picture film. On information and belief this defendant admits that the defendant, Warner Bros. Pictures, Inc., is a producer of motion picture film and that it is affiliated with the defendants, Warner Bros. Theatres, Inc., and Warner Bros. Circuit Management Corporation, but it denies that Warner Bros. Pictures, Inc., is a distributor of motion picture film. This defendant admits that Warner Bros. Circuit Management Corporation operates a number of motion picture theatres in the Chicago Exchange Districts of the defendant distributors.

The defendant denies that it has entered into any illegal agreement or conspiracy pursuant to which the distributor defendants refuse to license "first run" feature pictures to the plaintiffs, except in a week of release non-competitive to the runs granted any and all theatres owned and operated or leased by this defendant or any of the other defendants or prior to the tenth week after the conclusion of the Loop First Run.

This defendant admits that it has entered into separately negotiated license agreements in the ordinary course of business with certain of the distributor defendants pursuant to which such distributor defendants have granted, with respect to the motion pictures covered by such agreements, priority of run and clearance to certain theatres operated by this defendant over the Jackson Park Theatre, pursuant to the provisions of which agreements the said distributor defendants have licensed motion pictures to the Jackson Park Theatre in First Week of General Release, which is the tenth week after Loop First Run.

8. This defendant denies that it has entered into any

illegal agreement or conspiracy pursuant to which the defendant distributors or any of them have refused to license any feature film for exhibition in the Jackson Park Theatre prior to the First Week of General Release in order to destroy the plaintiffs business in competition with the theatres of this defendant or with any other distributor owned, controlled, operated or affiliated theatres. This defendant denies that the Jackson Park Theatre is unable to obtain any feature film for exhibition until after each film has been exhibited or the right to such exhibition refused by all but one of the theatres competing with the Jackson Park Theatre and owned by either of the defendant exhibitors. This defendant denies that it is now, or that it has ever been, a party to any contract, combination, conspiracy or monopoly in restraint of interstate trade and commerce, or in violation of the so-called Sherman Anti-Trust Act or Clayton Anti-Trust Act. Except as hereinabove in this Paragraph expressly admitted or denied this defendant has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 8 of said complaint and therefore it denies the same.

10. This defendant denies that the Jackson Park Theatre is a modern theatre in all respects. It admits that the said theatre has been engaged in the exhibition of motion picture films since approximately the year 1916, but it has no knowledge or information as to whether it has been operated continuously. It is unable to determine what it meant by the allegation in Paragraph 10 of the complaint to the effect that it is impossible to operate the Jackson Park Theatre profitably unless "First Run" feature pictures can be obtained on a competitive basis, and therefore it denies this allegation.

This defendant denies that it has been a party to any conspiracies which have resulted in the Jackson Park Theatre being unable to compete on equal terms as to price and as to playing position and as to clearance with all other theatres in its competitive district. It is unable to determine from the complaint when the alleged conspiracy is alleged to have been entered into and it therefore denies that prior to the inception of the alleged conspiracy none of the theatres mentioned in the complaint except the Tivoli and Avalon, played motion pictures on prior release dates to that of the plaintiffs' theatre, and it denies that prior to such time said Jackson Park Theatre played ahead of the

Shore Theatre, the Woodlawn Theatre, which now is the Maryland Theatre, and the Jeffrey Theatre, and it denies that prior to such time the Tivoli and Avalon Theatres enjoyed a release date only one week in advance of the Jackson Park Theatre. This defendant has no knowledge or information sufficient to form a belief as to when, if ever, the said conditions which are alleged to have prevailed "prior to the inception of the said unlawful conspiracy" prevailed in fact. This defendant admits that it has from time to time licensed motion pictures for exhibition in the Tivoli Theatre in "A Pre Release Weeks" which is the 4th, 5th or 6th week after Loop First Run. This defendant further admits that certain of the distributor defendants have licensed their motion pictures which have previously been exhibited in the Tivoli Theatres for exhibition in the Avalon Theatre in Second or Third A Pre Release Weeks, which are the 5th or 6th weeks after Loop First Run. This defendant admits that some of the distributor defendants have from time to time licensed their motion pictures to the Jackson Park Theatre in First Week of General Release which is the tenth week after Loop First Run.

This defendant denies that it has entered into any unlawful agreement with respect to the so-called "system of release" hereinbefore described and it denies that it has used any "system of release" or that it has entered into any agreement to suppress the competition of the plaintiffs' theatre with the theatres of this defendant or with the theatres of the distributor defendants affiliates. This defendant denies that there was ever a time when all the theatres mentioned in plaintiffs' complaint could exhibit motion picture films immediately following the exhibition of said films at the Chicago Loop, or that there was ever a time when any theatre was free to compete for the pictures of the defendant distributors on the basis of price alone, without consideration of the other factors which enter into the competition of theatres to license the films of the defendant distributors.

This defendant denies that the plaintiffs have, since they acquired the Jackson Park Theatre, been unable to obtain film from the distributor defendants on a competitive basis. This defendant alleges that the distributor defendants always take the price offered to it by the operator of any theatre, including the Jackson Park Theatre, into consid-

eration as one of the factors entering into the negotiations for the license of motion picture films. This defendant has no knowledge or information sufficient to enable it to form a belief as to whether the distributor defendants have ever refused to release films for exhibition in the Jackson Park Theatre until after they have been exhibited by the distributor owned, operated or affiliated competitors of the plaintiffs, except in compliance with the provisions of specific contracts between the distributor defendants and the operator of a theatre competitive to the plaintiffs' theatre relating to specific pictures, and therefore it denies this allegation.

This defendant denies that the distributor defendants together control approximately nine[illegible]ty per cent of the production of motion picture film in the United States. This defendant has no knowledge or information sufficient to form a belief as to whether it is possible to operate the Jackson Park Theatre at a profit without licensing motion picture films for exhibition from some one or more of the defendants at release dates competitive with other theatres in the competitive district of plaintiffs' theatre.

This defendant denies that at the time the Jackson Park Theatre was acquired by the plaintiffs it was combined together with the other defendants or any of them. It denies that it conspired with the defendants or any of them to introduce "double features" in its own theatres competing with the plaintiffs' theatre or to force the plaintiffs to buy double features, and it denies that it ever forced the plaintiffs to buy double features. It denies that double features were introduced in any theatres in Chicago by any concerted action by this defendant with the other defendants or any of them. This defendant has no knowledge or information sufficient to form a belief as to whether the introduction of double features in the Jackson Park Theatre increased the cost of exhibiting film in the plaintiffs' theatre. It denies that by reason of the other defendants acting in concert with it in consideration of similar reciprocal concerted action in metropolitan centers, other than Chicago, it has prevented the plaintiffs from entrance to the so-called vital "First Run" film market. It denies that the plaintiffs have been relegated to a secondary and inferior position in the exhibition of motion picture film by virtue of any act of this defendant and it further de-

nies that this defendant has been a party to any unlawful conspiracy to compel the plaintiffs to accept pictures for exhibition after the theatres affiliated with this defendant or with any of the other defendants were through with them, or subject to unfavorable or unreasonable rental terms or conditions of availability, clearance or zoning. This defendant denies that the plaintiffs have been denied a free, open and untrammeled market in which to license motion pictures, and it alleges that the distributor defendants have always considered, in licensing their motion pictures, the ability and willingness of the plaintiffs and of this defendant and of the operators of all other theatres to pay fair and reasonable film rentals as one factor in negotiations with respect to licensing of motion picture films. This defendant denies that any of its theatres competing with the Jackson Park Theatre have been granted any unreasonable, discriminatory or arbitrary clearances or run over the Jackson Park Theatre in favor of the theatres owned by this defendant or by Warner Bros. Theatres, Inc., or by Warner Bros. Circuit Management Corporation. This defendant denies that it has entered into any conspiracy to force the plaintiffs to buy film under a system of "block booking" whereby they are forced to contract in advance for a number of films or forced to contract for films "sight unseen" or forced to buy short subjects, news reels, serials or re-issues, which they did not desire to exhibit as a condition to the licensing by the distributor defendants of feature pictures to the plaintiffs.

Except as hereinabove in this paragraph expressly admitted or denied, this defendant has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph 10 of said complaint and therefore it denies the same.

11. This defendant has no knowledge or information sufficient to enable it to form a belief as to the truth of any of the allegations contained in Paragraph 11 of the complaint and therefore it denies the same. This defendant denies specifically that the plaintiffs have been damaged or subjected to any loss of earnings as a result of any unlawful agreement or conspiracy to which this defendant is or has been a party.

12. This defendant denies each and every allegation contained in Paragraph 12 of the complaint.

Wherefore, this defendant denies that the plaintiffs are entitled to the relief or any of it demanded in said complaint.

Spitz and Adcock,
Attorneys for Balaban & Katz Corporation,
By Edmund D. Adcock,
33 North La Salle Street,
Chicago, Illinois,
Telephone: Dearborn 8700.

43 And afterwards on, to wit, the 27th day of January, 1943, came the Defendants, Vitagraph, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Joint and Several Answer, in words and figures following, to wit:

44 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

JOINT AND SEVERAL ANSWER OF THE DEFENDANTS, VITAGRAPH, INC., A CORPORATION, WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, A CORPORATION, AND WARNER BROS. THEATRES, INC., A CORPORATION, TO THE COMPLAINT.

The defendants, Vitagraph, Inc., a corporation, Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation, for answer to the complaint say:

1. That Vitagraph, Inc., is a New York corporation doing business in many states, including the state of Illinois, engaged in the distribution of motion pictures; that Warner Bros. Theatres, Inc. and Warner Bros. Circuit
45 Management Corporation are both Delaware corporations and engaged in doing business within the State of Illinois either in the ownership or operation of theatres for exhibition, including amongst other theatres those mentioned in paragraph 6 of the complaint; of the "Warner" theatres listed in paragraph 6 of the complaint only the Shore Theatre is owned and operated by Warner Bros.

Theatres, Inc., the Jeffery and Grove Theatres are owned by Bird Theatre Corporation, and the Avalon is owned or operated by Federal Theatres Company, both of the latter two companies being also affiliated with Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation manages the operation of theatres, including the "Warner" theatres mentioned in paragraph 6 of the complaint; that these defendants are all affiliated with Warner Bros. Pictures, Inc., which is engaged in the business of producing pictures outside the State of Illinois but which does not distribute pictures.

2. That these defendants are without knowledge as to the truth or falsity of any of the averments in the complaint contained not hereinafter specifically admitted or denied, and they therefore neither admit nor deny the same but ask strict proof thereof.

3. They are without knowledge sufficient to form a belief as to the truth of the averments contained in paragraph 1, and therefore neither admit nor deny the same but pray strict proof thereof, save they admit that there is a motion picture theatre known as the Jackson Park Theatre which they believe to be situated upon the real estate legally described in said paragraph 1 of the complaint.

4. They admit that Warner Bros. Pictures, Inc., is incorporated under the laws of the State of Delaware, 46 as in paragraph 2 of the complaint averred, and, save as to the portion of the remaining averments of said paragraph hereinabove answered, they are without knowledge sufficient to form a belief and they therefore neither admit nor deny but ask strict proof; they deny that Warner Bros. Pictures, Inc. is doing or transacting business in or is found in the State of Illinois.

5. They deny the averments of paragraph 3 of the complaint except the allegation that there is diversity of citizenship of each of the plaintiffs to each of the defendants, an allegation as to which they say they are without sufficient knowledge to form any belief and they therefore call for proof.

6. They deny that as licensees of motion picture film produced outside the State of Illinois and transported in interstate commerce, pursuant to licensing agreements, the plaintiffs and each of them are engaged in interstate

commerce. As to the remaining averments contained in paragraph 4 of the complaint they are without knowledge sufficient to form a belief, and therefore call for proof.

7. They deny the allegations contained in paragraph 5 of the complaint and they deny that they or any of either of them are parties to any combination, contract or conspiracy in restraint of trade or commerce among the several states of the United States.

8. They deny that the runs granted the theatres in paragraph 6 of the complaint mentioned are discriminatory and arbitrary and that they illegally discriminate against the business of the plaintiffs in favor of these or any other defendant exhibitors, and they refer to the license agreements ready to be produced upon the hearing of this
47 cause for the precise runs under which the theatres mentioned in paragraph 6 of the complaint are actually operating. They are without knowledge sufficient to form a belief as to the seating capacity of the theatres in that paragraph mentioned other than those owned or operated or managed by one or more of these defendants; but they admit the remaining averments in said paragraph 6 contained.

9. They deny the averment in paragraph 7 of the complaint contained that the defendant Warner Bros. Pictures, Inc., is a distributor of motion picture film. They admit that the defendant Balaban & Katz Corporation operates a number of motion picture theatres in the Chicago exchange area and they believe it to be a subsidiary of Paramount Pictures, Inc., a producer and distributor of motion picture film. They admit that Warner Bros. Theatres, Inc. and Warner Bros. Circuit Management Corporation own or operate or manage motion picture theatres in the Chicago exchange district. They deny the remaining averments contained in paragraph 7.

10. They deny the averments contained in paragraph 8 of the complaint.

11. They have no knowledge of and they therefore neither admit nor deny the averments contained in paragraph 10 of the complaint that plaintiffs' theatre is a modern theatre in all respects and has been engaged in the showing of motion pictures since the beginning of the year 1916; and they are without knowledge as to the terms and conditions under which the Tivoli Theatre has been playing

its pictures licensed from distributors other than the defendant, Vitagraph, Inc., and they therefore neither
48 admit nor deny said averments but call for proof; and they are without knowledge of the terms and conditions under which plaintiffs' theatre has been and is exhibiting films except those shown in license agreements between the defendant Vitagraph, Inc., and the plaintiffs, to which they refer for the particular terms and which the defendant, Vitagraph, Inc., is ready, able, and willing to produce upon the trial of this cause. In all other respects they deny the averments contained in paragraph 10 of the complaint.

12. Answering paragraph 11 of the complaint, they say they are without knowledge sufficient to form a belief as to any of the allegations therein contained, except they deny that the plaintiffs have been damaged or subjected to any loss as a result of any unlawful agreement or conspiracy to which these defendants or any one or more of them have been parties.

13. They deny the averments contained in paragraph 12 of the complaint.

Wherefore, they deny that the plaintiffs are entitled to the relief requested in their complaint, or to any part thereof, and ask that the same be dismissed at plaintiffs' costs.

Defrees, Fiske, O'Brien & Thomson,
Attorneys for the Defendants,
Vitagraph, Inc., a corporation,
Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation.
105 South La Salle Street,
Chicago, Illinois.

Vincent O'Brien.

49 And afterwards on, to wit, the 26th day of March, 1943, came the Defendant Warner Bros. Pictures, Inc., by its attorneys and filed in the Clerk's office of said Court its certain Answer, in words and figures following, to wit:

50 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

ANSWER OF WARNER BROS. PICTURES, INC., TO THE COMPLAINT.

Now comes Warner Bros. Pictures, Inc., and for its answer to the complaint adopts the answer heretofore filed by Vitagraph, Inc., Warner Bros. Circuit Management Corporation, and Warner Bros. Theatres, Inc., with the same effect as though the same were here set forth in haec verba.

Warner Bros. Pictures, Inc., a corporation,
By Defrees, Fiske, O'Brien & Thomson,
Its Attorneys.

51 And afterwards on, to wit, the 28th day of January, 1944, came the Defendant, RKO Radio Pictures, Inc. by its attorneys and filed in the Clerk's office of said Court its certain Amendment To Its Answer, in words and figures following, to wit:

52 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

AMENDMENT TO ANSWER OF DEFENDANT, RKO RADIO PICTURES, INC.

Now comes RKO Radio Pictures, Inc., a corporation, one of the defendants herein, by Mayer, Meyer, Austrian & Platt, its attorneys, and by leave of court amends its answer to the complaint of the plaintiffs, in paragraph 11 thereof, by inserting in said paragraph 11 the following:

"This defendant further alleges that any and all

damages claimed to have been suffered by the plaintiffs, resulting from any act or acts by the defendants, or any of them, in furtherance of the alleged conspiracy or conspiracies described in plaintiffs' complaint prior to July 28, 1937, cannot be recovered in this action, but are barred by the Illinois Statute of Limitations (Chapter 83, Section 16, Illinois Revised Statutes, 1943; Section 15 of 'An Act in Regard to Limitations', approved April 4, 1872)."

Mayer, Meyer, Austrian & Platt,
Attorneys for RKO Radio Pictures, Inc.,
By Miles G. Seeley,
a member of said firm,
231 South LaSalle Street,
Chicago, Illinois.

52½ And on the same day, to wit, the 28th day of January, 1944, came the Defendant, Twentieth Century-Fox Film Corporation, by its attorneys and filed in the Clerk's office of said Court its certain Amendment to its Answer, in words and figures following, to wit:

53 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—4525) * *

AMENDMENT TO ANSWER OF DEFENDANT, TWENTIETH CENTURY-FOX FILM CORPORATION.

Now comes Twentieth Century-Fox Film Corporation, a corporation, one of the defendants herein, by Mayer, Meyer, Austrian & Platt, its attorneys, and by leave of court amends its answer to the complaint of the plaintiffs, in paragraph 11 thereof, by inserting in said paragraph 11 the following:

"This defendant further alleges that any and all damages claimed to have been suffered by the plaintiffs, resulting from any act or acts by the defendants, or any of them, in furtherance of the alleged conspiracy or conspiracies described in plaintiffs' complaint prior to July 28, 1937, cannot be recovered in this action, but are barred

by the Illinois Statute of Limitations (Chapter 83, Section 16, Illinois Revised Statutes, 1943; Section 15 of 'An Act in Regard to Limitations', approved April 4, 1872)."

Mayer, Meyer, Austrian & Platt,
Attorneys for Twentieth Century Fox Corporation,
By Miles G. Seeley,
a member of said firm.
231 South LaSalle Street,
Chicago, Illinois.

54 And on the same day, to wit, the 28th day of January, 1944, came the defendant, Loew's Incorporated, by its attorneys and filed in the Clerk's office of said Court its certain Amendment to its Answer, in words and figures following, to wit:

55 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

AMENDMENT TO ANSWER OF DEFENDANT, LOEW'S, INCORPORATED.

Now comes Loew's, Incorporated, a corporation, one of the defendants herein, by Mayer, Meyer, Austrian & Platt, its attorneys, and by leave of court amends its answer to the complaint of the plaintiffs, in paragraph 11 thereof, by inserting in said paragraph 11 the following:

"This defendant further alleges that any and all damages claimed to have been suffered by the plaintiffs, resulting from any act or acts by the defendants, or any of them, in furtherance of the alleged conspiracy or conspiracies described in plaintiffs' complaint prior to July 28, 1937, cannot be recovered in this action, but are barred by the Illinois Statute of Limitations (Chapter 83, Section 16, Illinois Revised Statutes, 1943; Section 15 of 'An Act in Regard to Limitations', approved April 4, 1872)."

Mayer, Meyer, Austrian & Platt,
Attorneys for Loew's, Incorporated.
By Miles G. Seeley,
a member of said firm.
231 South LaSalle Street,
Chicago, Illinois.

56 And on the same day, to wit, the 28th day of January, 1944, came the Defendants, Warner Bros. Pictures, Inc., et al., by their attorneys and filed in the Clerk's office of said Court their certain Amendment to Their Answer, in words and figures following, to wit:

57 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

AMENDMENT TO ANSWER OF THE DEFENDANTS, WARNER BROS. PICTURES, INC., VITAGRAPH, INC., WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, AND WARNER BROS. THEATRES, INC.

Now come Warner Bros. Pictures, Inc., a corporation, Vitagraph, Inc., a corporation, Warner Bros. Circuit Management Corporation, a corporation, and Warner Bros. Theatres, Inc., a corporation, defendants herein, by Defrees, Fiske, O'Brien & Thomson, their attorneys, and by leave of court amend their answer to the complaint by the addition and insertion of a new paragraph numbered 14 on page 5 of their answer, in words and figures as follows, to wit:

"14. These defendants further allege that any and all damages claimed to have been suffered by the plaintiffs, resulting from any act or acts of the defendants, or any of them, in furtherance of the alleged conspiracy or conspiracies described in plaintiffs' complaint prior to July 28, 1937, cannot be recovered in this action, but are barred
58 by the Illinois Statute of Limitations (Chapter 83, Section 16, Illinois Revised Statutes, 1943; Section 15 of 'An Act in Regard to Limitations', approved April 4, 1872)."

Defrees, Fiske, O'Brien & Thomson,
Attorneys for the Defendants, Warner Bros. Pictures, Inc., Vitagraph, Inc., Warner Bros. Circuit Management Corporation, and Warner Bros. Theatres, Inc.,
105 South La Salle Street,
Chicago, Illinois.

Vincent O'Brien.

59 And on the same day, to wit, the 28th day of January, 1944, came the Defendant, Balaban & Katz Corporation, by its attorneys and filed in the Clerk's office of said Court its certain Amendment To Its Answer, in words and figures following, to wit.

60 In the District Court of the United States.

* * (Caption—4525) * *

AMENDMENT TO ANSWER OF DEFENDANT BALABAN & KATZ CORPORATION.

Now comes Balaban & Katz Corporation, a corporation, one of the defendants herein, and by leave of court amends its answer to the complaint of the plaintiffs by the addition and insertion of a new paragraph numbered 13 on page 12 of the answer, in words and figures as follows, towit:

"13. This defendant further alleges that any and all damages claimed to have been suffered by the plaintiffs, resulting from any act or acts of the defendants, or any of them, in furtherance of the alleged conspiracy or conspiracies described in plaintiffs' complaint prior to July 28, 1937, cannot be recovered in this action, but are barred by the Illinois Statute of Limitations (Chapter 83, Section 16, Illinois Revised Statutes, 1943; Section 15 of 'An Act in Regard to Limitations,' approved April 4, 1872)."

Edmund D. Adcock,
Arthur A. Goldberg,
Attorneys for Balaban & Katz Corporation, Defendant.
134 South La Salle Street,
Chicago.

61 And on the same day, to wit, the 28th day of January, 1944, came the Defendant, Paramount Pictures, Inc., by its attorneys and filed in the Clerk's office of said Court its certain Amendment To Its Answer, in words and figures following, to wit:

62 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

AMENDMENT TO ANSWER OF PARAMOUNT PICTURES, INC., DEFENDANT.

Now comes Paramount Pictures, Inc., a corporation one of the defendants herein, and by leave of court amends its answer to the complaint of the plaintiffs by the addition and insertion of a new paragraph numbered 13 on page 11 of the answer, in words and figures as follows, towit:

"13. This defendant further alleges that any and all damages claimed to have been suffered by the plaintiffs, resulting from any act or acts of the defendants, or any of them, in furtherance of the alleged conspiracy or conspiracies described in plaintiffs' complaint prior to July 28, 1937, cannot be recovered in this action, but are barred by the Illinois Statute of Limitations (Chapter 83, Section 16, Illinois Revised Statutes, 1943; Section 15 of 'An Act in Regard to Limitations,' approved April 4, 1872)."

Edmund D. Adcock,
Arthur A. Goldberg,
Attorneys for Paramount Pictures, Inc., Defendant,
134 South La Salle Street,
Chicago.

63 And afterwards, to wit, on the 14th day of February, 1944, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

64 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

Monday, February 14, 1944.

Present: Honorable Michael L. Igoe, District Judge.

This day this cause being called for trial come the parties by their attorneys respectively and issues being joined, It Is Ordered that a Jury come. Whereupon come a jury of twelve (12) good and lawful men and women to-wit:

Mike Gerard
Irene I. Larson
Mrs. Frances H. Lindo
Mrs. Eyrl A. Jones
Mrs. Edith M. Richardson
Mrs. Margaret E. Johnson
Gertrude Foley
Mrs. Dorothy Williams
Richard A. Valles
Zillia Dunn
Erick K. Dahlberg
Mrs. Florence Voltz Wittleder

who are duly elected, empanelled and sworn well and truly to try the issues herein and a true verdict to render according to the law and the evidence and the trial of this cause proceeds

Opening statements are heard in part and It Is Ordered that the Jury be and they are hereby permitted to separate until February 15th, 1944 at 10:30 A. M.

65 And afterwards, to wit, on the 18th day of February, 1944, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

66 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

Friday, February 18, 1944.

Present: Honorable Michael L. Igoe, District Judge.

This day this cause coming on for further trial again come the parties by their attorneys, and the Jury heretofore empanelled herein also come The plaintiffs consenting thereto, It Is Ordered that the motion of the defendants that the Jury be permitted to visit the theatres involved herein, be and it is hereby granted

It Is Further Ordered that the United States Deputy Marshal be and he is hereby directed to take the Jury to view the said several theatres on the afternoon of this date at 2:00 P. M., that the defendants be and they are hereby directed to provide transportation therefor

Further evidence is heard for the plaintiffs and It Is Further Ordered that the Jury be and they are hereby permitted to separate until 2:00 P. M., of this date and, after viewing the said theatres, to again separate until February 21, 1944 at 10:30 A. M.

67 And afterwards, to wit, on the 23rd day of February, 1944, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

68 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

ORDER.

On motion of attorneys for Vitagraph, Inc. and Warner Bros. Circuit Management Corporation;

It Is Hereby Ordered that all of the contracts heretofore or hereafter offered and received in evidence in the above entitled cause or photostats thereof, which the respective parties are hereby granted leave to substitute, be filed with the Clerk of this court in the above entitled cause after the conclusion of the trial herein.

It Is Further Ordered that the said contracts or photostats thereof be sealed and impounded by the Clerk of this court at the conclusion of this trial herein, and that they be made available for inspection to none other than the parties to this cause or their counsel now of record until the further order of the court.

Enter:

Igoe,
Judge.

Dated February 23, 1944.

260 And on the same day to wit, the 11th day of October, 1944 filed in the Clerk's office of said Court a certain Reporter's Transcript and copies of Exhibits in Volumes I to VII both inclusive in words and figures following, to wit:

2 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

Report of Proceedings at the trial of the above entitled case before the Honorable Michael L. Igoe, Judge of said Court, and a Jury, commencing on the 14th day of February, A. D. 1944.

Appearances:

Mr. Thomas C. McConnell, and Mr. Norman A. Korfist, on behalf of the Plaintiffs;

Mr. Edmund D. Adcock, on behalf of Paramount Pictures, Inc. and Balaban & Katz Corporation;

3 Mr. Arthur A. Goldberg, on behalf of Balaban & Katz Corporation;

Messrs. Mayer, Meyer, Austrian & Platt, By Mr. Miles G. Seeley, on behalf of RKO Radio Pictures, Inc., Loew's, Incorporated, and Twentieth Century-Fox Film Corporation;

Messrs. Defrees, Fiske, O'Brien & Thomson, By Mr. Vincent O'Brien, on behalf of Vitagraph, Inc., Warner Bros. Pictures, Inc., Warner Bros. Circuit Management Corporation, and Warner Bros. Theatres, Inc.

17 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

Before Igoe, J. and J.
Monday, February 14th, 1944,
2:00 o'clock P. M.

Court met pursuant to noon recess.

Present: As before.

The Court: All right; go ahead, Mr. McConnell.

18 Opening Statement to the Jury on Behalf of the Plaintiffs, by Mr. McConnell:

If the Court please, and ladies and gentlemen of the jury, it is now my province as attorney for the plaintiffs in this case to make what is called an opening statement of the case.

Now, an opening statement, as you probably realize, is not proof in this case. It is merely a statement of what the plaintiffs are going to prove in the case; and the statements that I am about to make to you people are not certainly not to be considered by you as proof of any issue in this case. The purpose of this statement is to, if I can, clarify the issues here and tell you people what this case is about from the plaintiffs' position.

The plaintiffs, as I think I stated in the few opening remarks that I made at the time of the selection of the jury, own and operate the Jackson Park Theatre, which is a motion picture house which is located at 67th and Stony Island avenue, in the City of Chicago. That motion picture house was in existence as such long prior to the time that the plaintiffs acquired it.

19 The proof here will show that the Theatre first opened for business on Thanksgiving day in the year 1916. At that time it was the only motion picture theatre in that particular district. Now, I don't know whether you are familiar with that district of town or not. It is sort of a shopping district, it is the junction of street car lines, and a number of business properties are there, and in back of the business properties, the proof will show, is a residential district.

After the plaintiffs' Theatre was opened, other theatres came in, other theatres were built, and the proof will show

ultimately practically all of the competition of the Jackson Park Theatre, that is, competition in the sense of competing with the public for patronage in its Theatre is represented by theatres now owned and operated by the Balaban & Katz chain of theatres, and by the Warner Bros. chain of theatres.

The proof will show that here in the City of Chicago there are two main chief chains of theatres, the Balaban & Katz chain and the Warner Bros. chain, and then there are a number of independent threatres which I think
20 will be referred to pretty generally throughout the proof as the independents, and the Jackson Park Theatre is what is called an independent Theatre; it has no connection with any producer or with any exhibitor of motion pictures.

The proof will show that the Theatre was built as part of another building, although the Theatre itself is an integral unit; it is not connected with the building except in the front.

The Theatre was built by Edward I. Bloom, who is the father of the four plaintiffs in this case. The plaintiffs in this case are all brothers and sisters, all children of Edward I. Bloom and Marie C. Bloom, and the original Theatre property and other property adjacent to the Theatre was owned by Mr. and Mrs. Bloom, and operated by them up till the time it was sold to their children.

The proof will show that for a long time the Jackson Park Theatre played ahead of other theatres in that district; that gradually over the course of the years, and whether gradually or not, over the course of the years, up until the time that the plaintiffs had acquired the theatre, it was gradually moved back in its playing position, back of the other theatres, and at the time of its acqui-
21 sition by the plaintiffs in this case it was playing in what is called tenth week of general release, where it now plays. And to make that plain, I am going to have to go rather carefully and rather in a detailed way into the system of releasing of pictures in the Chicago area, in the Chicago exchange district.

It is the contention of the Plaintiffs that this system of release socalled has been set up by the Balaban & Katz chain together, in combination, with the distributors and the exhibitors of motion pictures, and that the Warner Bros. theatres have also joined in that arrangement, and

that they have set up a socalled system of release which is binding upon all theatres in the Chicago Exchange District.

It is a rather involved and rather technical subject at first glance; that is, the first impression of it is rather confusing. I know it was to me, and I assume it will be to you, and that is my excuse, I think for going into it in somewhat more detail than I would ordinarily in one simple branch or phase of a factual question in a case.

22 The Chicago release system, as it is now set up, starts with the Loop run, and I want to define my term as to "run", so that we will know what we are talking about.

A run, as I define it—and the defendants may have some different view of it,—but as I am using the term, the run is the period of time in which any given theatre plays a picture; that is, the time it plays the picture, the period of time in which it plays the picture. In other words, the extent in which it has pictures under a given release date and can play them.

Now, there is a little difference between that term and the playing position of the theatre. The run I think is generally considered to mean the length of time, and the playing position has also been referred to as the run, but the playing position is with reference to other theatres in a given district or a given situation.

As I will use the term, the term "run" will include both the time and the playing position of the theatre; so that we start with what is called the Loop run.

23 The Loop run which is granted by all the exhibitors, uniformly, every single one, there are no exceptions, to the Loop theatres, first grade, de luxe, first grade theatres, and the proof will show that all of the Loop de luxe theatres are owned by Balaban & Katz, with the exception of two theatres, the Grand and the Palace, which are leased or operated by RKO; so that Balaban & Katz and RKO are the Companies which are concerned with the Loop run, as I term a Loop run.

The Loop run runs the pictures when it is first released in the Chicago district. When the moving picture distributors first release the picture in the Chicago district, it clears through what might be called a bottle neck or a Loop run. It must first play in the Loop, unless the Loop theatre doesn't care to play the picture at all, at which time it can pass up its right to play the picture in the Loop run, and

then it becomes, in due course, available to the subsequent run theatres.

Now, the Loop run, as I say, runs for a period of time, which is stipulated in contracts with the Loop exhibitor. It may run for a week, and may run for longer. It usually runs for such period of time as it can make money in the Loop run.

And then after the conclusion of the Loop run, after
24 the picture is finished playing in a Loop theatre, the picture lies quiet, what you might call dead waiting time, for a period of some three weeks; not some three weeks, it is exactly three weeks. It is three weeks from the conclusion of the Loop run; and no theatre in the Chicago district can play that picture. It must remain unplayed by all theatres.

That sometimes is termed "clearance". That is, clearance is the difference of time between the conclusion of one run and the beginning of another run, that waiting time being stipulated for and contracted for. And in this particular instance, while it is not technically clearance I suppose it is called "clearance" because it is part of the release system, there is actually a three weeks waiting time between the conclusion of the socalled Loop run and the next succeeding run of the picture.

The next succeeding run of the picture is what is called an "A" pre-release run. The "A" pre-release run is the run of the what they call "A" de luxe theatres, theatres which are, in practically every instance, owned by Balaban & Katz, or Warner Bros. theatres,—maybe one or two who are not—but I think the only ones that are not, contract and buy their pictures through Balaban & Katz booking agencies.

25 These "A" theatres have three weeks in which to play the pictures. There is the first week of "A", the second week of "A", and the third week of "A", and all of these "A" theatres do not play the picture in the same "A" weeks. That is, the Granada may play the picture ahead of the Marbro Theatre, but both being "A" theatres, one may play the first week of "A" release, and the second in the second week of "A" release, but in any event there are three weeks in the "A" pre-release system, where the pictures are not to play in any theatre except the "A" pre-release theatres.

So now we have gotten the Loop run, which is a run of

indefinite length, plus three weeks of waiting time, plus three weeks in "A" theatres. We have six weeks now.

The next theatres that can play the pictures are what are called the "B" pre-release theatres, and the "B" pre-release theatres are to a large extent, too, owned by Balaban & Katz and by Warner Bros. Theatres.

In the "B" pre-release theatres the picture plays for two weeks of "B" release, the first week of "B" and the second week of "B". And there again different "B" theatres may not play pictures in the same week,
26 they cannot play them for the whole week, but may play them for certain days in those two weeks, but no other theatre, only B theatres can play those pictures in those two weeks. So two weeks more, that makes eight weeks. And during all that time the pictures must have been playing in either the Loop theatres or the "A" pre-release theatres, or the "B" pre-release theatres.

Then we come to the "C" week of release, which is one week of release, which starts with the ninth week after the conclusion of the Loop run. And the "C" theatres, a great many of them, are owned by Balaban & Katz; a great many of them are owned by Warner Bros. There are, however, in "C" week of release, some independent theatres.

In "C" week the theatre can play the week or a portion of the week, but no other theatre than a "C" theatre can play in that week of release.

Now, the runs which I have described, as stated to you, are all what they call pre-release runs, pre to the release of general release. I suppose it is a derivation of the term, because the next week of release is what is called general release, and that is the tenth week after the
27 conclusion of the Loop run. The picture is not available, and cannot be played by any general release house until after, until the tenth week after the conclusion of the Loop run; and it is in first week of general release which the Jackson Park Theatre now plays. In other words, it must wait a period of nine weeks after the conclusion of the Loop run before it can play the picture in its theatre.

Now, after the tenth week, or first week of general release, there is the second week, eleventh week after the conclusion of the run, of the Loop run; that is, the second week of general release, and there is the third week of

general release, and I suppose as many other additional weeks of general release as theatres stipulate for.

Now, the proof will show that in each one of those weeks of release there are minimum admission prices stated at which the theatres can play the picture.

In the Loop runs they must charge 75 cents for the exhibition of the picture in that run. If they vary from it, charge less, they lose the run, lose the right to exhibit the picture in that week of release or in those weeks of release.

28 In the "A" houses there is a minimum admission price of 55 cents, under the same situation; that is, if the stipulation in the contract is violated, and the picture is played at anything less than the 55 cents, then they lose the right to exhibit the picture.

In the "B" week there is a minimum admission price of 40 cents, and in the "C" week a minimum admission price of 30 cents, and in the first week of general release it is 25 cents, and I think it drops to 20 in the second and third weeks, and below that, 15 cents.

Now, the proof will show that all of those admission prices, and the setting of those runs, the setting of the whole set-up of the system of release is brought about by the contracts of Balaban & Katz and Warner Bros. with the different distributors and producers of motion picture film.

The releases are set up in the contracts, that whole system is set up and defined just as I have stated it to you, in those contracts.

The independent theatres, socalled, the proof will show, are not consulted in the setting up of that system of
29 release. That is something done over and above them, and they have no voice and no vote and no chance to negotiate about whether it should be that system or some other system.

We will show also that the producers and the distributors of motion picture film have a motive in joining in and setting up such a system of release, because to a large extent the proof will show they participate in this system by percentage contracts in the Loop and pre-release runs. In other words, their film rental is based upon a percentage of the take at the box office from the films in the pre-release run. When we get down to the subsequent run theatres, in many instances films are sold

on a set or stipulated price, but in pre-release runs I think we will find and prove in practically every instance the exhibitor and the producer have an interest in the take at the box office; and the proof will show that in order to protect that interest, they stipulate with the subsequent run theatres that they can not play the picture at earlier dates, or they can not charge less admission prices, so that they can avoid that competition of the subsequent run theatres of the prior runs in which they have an interest.

30 Now, the proof will show, I think, a monopolization of those prior runs by the Balaban & Katz and Warner Bros. Theatres, and exclusion from the prior runs, or any chance or opportunity to obtain such prior runs on the part of the socalled independent theatres.

And the proof will show that the public has a direct and a pecuniary interest in this whole situation. Of course, that is part of the plaintiffs' case.

I don't think I explained to you, I know I didn't, that in a suit of this kind the statute under which we are proceeding gives an individual litigant, such as the plaintiffs are in this case, the chance to urge and state the rights of the public, and their rights are more or less—the individual litigant's rights are more or less derivative to the public interest.

The purpose of the Act is that the litigants in setting up their private injury are in effect promoting the public interest in a free market and free competition for a product which is in interstate commerce.

Now, the proof will show that these films, which are the subject matter of the whole industry, are mostly

31 produced in Hollywood. In practically every instance, and certainly with these defendants here, the production of film is in Hollywood, and the film itself is either sent by parcel post or by freight or by express to the different Exchange Districts, and passes in commerce through the various States from the place and center of production to the place at which it is to be licensed for exhibition to the individual theatre; and in those instances these films come here under what is called a license agreement. That means simply that the film itself is still owned by the producer of the film. The title to the film does not pass. When we buy film for our theatres we simply get the right to exhibit that film under a license or rental

agreement, on which we pay a rental fee, and then when we get through with the picture it goes back to the owner, and the owner may distribute it in other film centers, and it is the proof along that line which establishes the interstate commerce feature of this case, which is, of course, jurisdictional, which goes to the right to bring this sort of a suit; and while the plaintiffs themselves are not moving back and forth in interstate commerce, their
32 particular business is simply exhibiting these films, still they have a right to assert that interstate commerce is restrained if this does in fact restrain the release of the film.

Now, the public, as I say, has an interest in this matter which we, in sort of a derivative way, have a right to assert.

The public has three distinct interests which are involved in this case. First, the right of the public, and we are a part of the public,—I am speaking now of plaintiffs—to freely engage in a business, in a free competitive situation, where the market is not controlled, and where they have a right to buy product on the basis of bidding their dollars against anybody's dollars, no matter who that person may be; and that is the theory, I think, of free competition. That is, our dollars are just as good as anybody else's dollars, that we have a right to bid them for product which we need to carry on our business; so the public has an interest in that phase of the case.

Then the public, as a viewer of motion pictures, has an interest. People out in our neighborhood who want to see a film, want to see it at an earlier date and at less
33 admission prices, they have a very definite interest, and that is a public interest which we have a right here to assert; and not only people in our district, but the people all over who are seeing film, who live in neighborhoods, the neighborhood theatres, they likewise have the same public interest of seeing films earlier, of not having the films held up and passaged through this artificial system created here through Loop runs and all the rest of it, and at competitive admission prices.

Now, those are the interests of the public which are involved in this case, as distinguished from the interests of the individual plaintiffs.

Now, as I say, the plaintiffs purchased this Theatre in 1936, November 1st, 1936, and the proof will show that

prior to the time of their purchase the prior owners of the Theatre had been trying for days, and years, and months, to obtain a run for their pictures which was comparable to the run that they had had before, and which they had been deprived of, and as they say, by the operation of this artificial system set up hereby the distributors and the producers, and these two exhibiting chains of theatres. They carried on negotiations over a long period of time, seeking to purchase film at an earlier date,
34 earlier than the tenth week, to which they were assigned. And the proof will show that they never at any time had even a chance to negotiate for the film at the earlier date, even though they had a theatre comparable in all respects to theatres which are running at earlier play dates than they are, and they were always met with this situation; and the proof will show this, and show it very clearly and very definitely, the proof will show that no independent exhibitor of motion pictures in the City of Chicago can negotiate for a run or playing position for motion pictures until after all of these defendant producers and exhibitors have finished their negotiations with the Balaban & Katz and the Warner Bros. Theatres.

Now, applying that situation to our situation, it simply meant this: Pictures are sold in a buying season, or they were up until fairly recent times. There was one buying season of the year, in the fall of the year, and the theatre went to the distributor, and he bought, the theatre owner bought his requirements of motion pictures for the year. Now, obviously he could not buy them until after they were produced. There was only a certain time of the
35 year in which they were produced and ready for sale; and when that time came, when he would go to the distributor and ask for the pictures, the distributor would say, "No, we can't deal with you now", and the proof will show that they told us that, "We can't deal with you now. The only time we can deal with you people is after we have concluded our negotiations with the Balaban & Katz and the Warner Bros. Theatres. And after we have made all our deals with them, then we will talk to you about selling you or licensing you motion pictures, but up until that time, we can't and will not talk to you about the matter". So that we were forced to wait until after all the deals had been negotiated with the chains. And that has been true over a long period of time; forced to wait,

wait until those deals not only for prior theatres, but for all of the Balaban & Katz and all of the Warner Bros. Theatres had been made and completed, and after that was all done, and that was all finished business, then we could talk. And then when we came to talk to the distributors and the producers of motion pictures, we were met with this: "Well, now, it's all right, and we are
36 willing to sell you the prior run, but it has already been sold, it is sold to Balaban & Katz and Warner Bros. Theatres; and of course we can't do anything about that, it just is not open for sale now, it has already been sold." And we say, and the proof I think will show, that that sort of a situation means that my dollar, by clients' dollar rather, can not be bid against Warner Bros. and Balaban & Katz' dollar, that bidding is closed, that there is no way, there is just no way to attack that situation except by a lawsuit, and that is why we are here.

Now, the proof will show that that leaves us in this situation: That we are surrounded here by Balaban & Katz and Warner Bros. Theatre. That map (indicating) is a little bit hard to follow; the theatres are almost impossible to see, I imagine, but out there in that district we are surrounded by Balaban & Katz and Warner Bros. theatres. That is our competition. That is what we are up against, and those are people we compete with in order to get patrons into our theatre; and yet we say that we can't compete by a prior run of a picture because of this situation that I have just outlined to you people.

37 Now, there would be one other way in which we might compete. The other way would be the matter of price. If we could not get pictures at an earlier playing position, why, then, we might compete for the patronage by lowering our admission price, but we can not do that either because the stipulations, as I say, in our contract, forbid us from asking for the patronage of the public at a lower price scale because those prices are fixed.

The proof will show here, by admissions taken from the mouths of these defendants themselves, that the motive in forbidding us to lower our prices or to get these prior runs, is to protect the earlier run theatres. We will show that by the admissions of the defendants themselves.

Now, in addition to the contractual feature of this case, of course it must be apparent to you people that there is inherent in the proof here a combination of interest through interlocking stock ownership.

We have, for instance, here, the Paramount Theatre—Paramount Pictures, Inc. Paramount Pictures, Inc., as you know, is a large producer of motion picture film
38 fine film, film which any theatre needs in order to conduct its theatre business.

Now, Paramount not only produces pictures, but Paramount sells pictures by distributing them to different theatres; and it also owns theatre chains, and one of those chains which Paramount owns is Balaban & Katz. And the proof will show here that the stock ownership of Paramount is 90 to 97 percent of Balaban & Katz. So that for all intents and purposes the proof will show here that those two defendants are one and the same, although they have, as you can see, competing interests, what should be competing interests, the exhibitor on one hand and the distributor and the maker of the motion pictures on the other.

Now, that same thing is true with RKO. They have two theatres here in the Loop. They do not have any other theatres but those two theatres here in the Loop. They have, we will show, many, many theatres in other sections of the country.

The same thing is true for Loew's. The same thing is true of Twentieth-Century-Fox. The same thing is true of Warner Bros.

We have these great combinations joining together what normally would be competing phases of the same business. Normally an exhibitor competes with different
39 distributors for the purchase of film. Here we have an integration of business where production and distribution and exhibition are all joined in the same hands and we are one independent, little theatre competing against that sort of a set-up. That is in the case.

We say that there is a conspiracy here. Now, I want to say a word about the proof on that phase of the case. It must be apparent to any of you, if you give it a moment's thought, that where a conspiracy is alleged and sought to be proved by the plaintiff's, it is almost impossible for us to come before you people with direct eye-witness testimony of three or four or five people sitting down together at a table and conspiring together, because that in itself would be a criminal act, and they would not invite us in at the conspiring table to view the situation. We, of course, can not bring that sort of proof

to you people. All we can do is to bring to you facts and circumstances, which are so conclusive in their nature and character that only one inference can be drawn from those facts. They are not just mere coincidences; that to have these different facts happening, one, two, three, four, must by necessary inference mean something back and beyond those facts which inspired the activity which is so evendent, and that is the nature and the sort of proof which we will offer on the conspiracy issue. So far as the contracts are concerned, that branch and phase of the case, we will produce the contracts themselves and the effect upon our business we will show by oral testimony.

Now, I have given you the general set-up of the release system here in Chicago, and the thing in which we are located, the situation with which we have to deal.

We say that we have a very finely equipped theatre, and we will show you the nature of the Theatre. We can show the history of it, show that by the usual criteria which are used by these defendants in placing a theatre, we are entitled to an earlier run for our pictures, and that it is only because of this situation which I have described to you that we can not get it.

Now, over and above that, we have the history of the Jackson Park Theatre, its earlier position ahead of its competition, and drawing patronage by virtue of that.

Now, what happened when we took the theatre? That is the next phase of this case.

The proof will show that the Jackson Park Theatre was having a struggle with a declining income prior to the time that we acquired it, but the struggle had not reached serious proportions even though this situation was going on, and for this reason, on December 21, 1936, almost a month after, a little over a month after we acquired the Theatre, prior to that theatres in the City of Chicago played pictures under a system of single release: that is, they played one picture, not two. Shortly after the plaintiffs acquired their Theatre, Balaban & Katz instituted in all of their Theatres a system of double featuring; that is, playing two pictures, as you know, instead of the old system of playing one.

Now, we will show that the effect of that on plaintiffs' business immediately put a point to this whole thing, immediately focused this whole thing in a way that showed the damage element to our business.

Under single features the pre-release houses could not play all the pictures that were available. There was always some product that seeped down through the list which had not been played all over the neighborhood, and had not been played by all of our competitors, socalled
42 free product, that is, free from having played at all these other theatres, so that it still had some box office appeal to our patrons and to the public. In spite of this system there was still product seeping down through the system, which got to the Jackson Park, which had not been played all over the neighborhood.

Well, now, after the institution of double features all of our competitors could play twice as many pictures as they played before, and we in turn had to play twice as many as we did before, because we had to have more product to keep up with the double feature competition of our competitors, so that the pictures—and I will use the term which is used in the industry, and it will be used in the proof—the pictures were milked of their box office appeal, just twice as fast under the system of double featuring as they were under the system of single release; so that at that time, just after we acquired our theatre, this thing begins to really pinch and hurt and affect the business of the Jackson Park, because then for the first time we get no free product at all, it has all been played all over the neighborhood—everywhere. So, from that time on we begin to feel the damage feature of this. Up to that
43 time the Theatre had felt the change in the system of release, but it had been able to live because there was some product which they could show. After that time it began to be hurt, and hurt badly. And the proof will show a steady decline in earnings from the time which we acquired it.

Now, we will show that the management features were the same under the prior ownership as under the present ownership. Mr. Dick Salkin, who will testify here, was Manager for a number of years while Mr. Edward I. Bloom owned the Theatre. The present plaintiffs kept him on as their Manager; there was no change in Management; there was no change in the general situation. In fact, just prior to the time that the plaintiffs purchased this Theatre, the proof will show that approximately $30,000 was expended in improving the property, so if anything the physical property and the management and all of that was better after the plaintiffs acquired it than it was before.

Now, before closing my opening statement, this is probably by way of anticipating the defendants' case, but I think it should be pointed out: as I stated to you people before, the Jackson Park Theatre could not buy any
44 pictures at all until Warner Bros. and B. & K. had had their negotiations with the distributors, had bought their pictures from all the distributors and from all the producers, had made all their deals, so that there were only certain things open to us when we came to buy.

Now, over a long period of time the plaintiffs' Theatre enjoyed what is called clearance over a theatre which is called the Hamilton Theatre, which is owned by Warner Bros. Theatres. Clearance, as I have said, is a space of time between the conclusion of one run and the beginning of another. It is to protect the prior theatre from the competition of the second one.

Now, I don't know what contention will be made of that, but this is the position of the plaintiffs: That at the time we purchased that clearance over the Hamilton Theatre, Warner Bros. had a prior chance to buy an earlier playing position, and had evidently passed it up, and that left the position open, so that we were enabled to buy a week ahead of the Hamilton Theatre, we buying in first week of general release, and Warner Bros. buying for their Hamilton Theatre in second week of general release.

Whatever the situation was, we bought in an open
45 market, as near open as we found ourselves in, and we did in that instance bid our dollar for that particular playing position.

All right. Later on, along in 1941, I think the proof will show that, Mr. Coston, of Warner Bros. approached the plaintiffs in this case, I think the proof will show clearly, knowing that the Jackson Park had been seeking an earlier playing position, Mr. Coston, who was an official with Warner Bros., came to us and said, "If you will let our Hamilton Theatre move up and play day and day," that is, play right alongside of the Jackson Park, "we will

use our good offices, whatever they may be, to try and negotiate for you, so that you can move your Jackson Park Theatre up into 'C' week", which is the next week higher.

He also stated, the proof will show, that he wanted to move his Jeffery Theatre up from "C" week to "B" week. So we said, "All right. We will let you move up the Hamilton Theatre if you negotiate along those lines to obtain 'C' week for us", and the negotiations went on, the Hamilton Theatre moved up, and finally Mr. Coston reported back and said he had take it up with Mr. Balaban.

Mr. John Balaban, and that it could not move up, that
46 the Jackson Park had to stay where it was; and then after that news came to us, we asked the film companies to put the Hamilton Theatre back where it had contracted to play, we having paid for the prior playing position, and they not having paid for it, that they go back where they were, aand the film companies did that.

Now, I don't know what contention will be made about that by the defendants in this case. The reason I mention it is this, so that you can get our position at the outset, that whatever our contractual arrangements were with reference to that situation, we were not engaged in any conspiracy or any combination. We were bidding as an individual, bidding our dollars for what they would buy in a given situation, and they did buy that, and having bought it, we were entitled to rely on our contracts; and we distinguish that situation from the other situation because we are precluded from any such buying under the situation which I have stated to you.

I think that in general sums up what the plaintiffs will prove in this case.

I don't know whether it has been made sufficiently clear to you just what this Sherman Act is. I think I might
47 read to you, it is very short, a statement of what this Act is. It is a Federal Statute which provides that "every contract, combination in the form of trust or other

wise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is hereby declared to be illegal."

And then another section of the Act gives a private litigant the right to assert that, and to assert its damages, if any can be shown as the result of it.

With that statement of what our proof will show, I think that the Plaintiffs are ready to produce their proof.

I thank you.

48 (Opening Statement on Behalf of Certain Defendants, by Mr. Seeley.)

65 Now, just why is it that the Loop theatres, such as the Chicago and others, can pay such very, very high license fees in comparison with subsequent run theatres? Partly, of course, it is their splendid locations; they have access to the shopping crowds, to out of town people who are here with money in their pockets and time to spend; they attract a certain number of people who will go down town especially to see a picture because it is one they want to see as early as possible, and they are willing to go down town and pay a higher admission price to see it right away; they would rather do that than wait around their own neighborhood and see it for less money a few weeks

66 later; so that those larger theatres are able to pay the highest film rentals if, and this is an "if", if the privilege of showing the picture which they acquire is sufficiently exclusive, and it has to be for obvious reasons.

The Chicago Theatre could not show the picture at 75 cents admission price if somewhere nearby another theatre were offering exactly the same thing at 35 cents admission price. People are by nature bargain hunters, and they go where prices are the lowest. So in order to justify the Chicago Theatre and the other big theatres in paying the high license fees which they can earn, it is to the interest of the distributor to grant them a certain amount of exclusiveness.

The first run in Chicago is generally licensed to only one theatre, and with about three weeks clearance over all other theatres. As we go down through second and third and subsequent runs, the amount of exclusiveness diminishes just as the film rental diminishes; that is, it diminishes in the area particularly. You all know that when you get down into subsequent runs there will be theatres in different neighborhoods all around the city which play
67 the picture, as they say, week and week, or day and date.

Now, it so happens that the biggest, most luxurious, some of the best located, some of the newest theatres in Chicago, are owned by Balaban & Katz and Warner Bros. today.

When my clients, the distributors, come to license their product, when they come into Chicago seeking, as I have said, to license their films in such a way as to get the highest aggregate license fee, they all come up against a fact which is indisputable; that is, that these theatres, if they can make a good deal with them, are the very best possible customer for their first runs, and that the defendants say is the reason and the only reason why these distributors license the earlier runs as they do, to Warner Bros. and Balaban & Katz.

There is no conspiracy, and we will put witnesses on the witness stand who will, who are in a position to know, who will swear directly that there is not and never has been any conspiracy.

The playing positions of which the plaintiffs complain here are the result of competition which has taken place over a period of years. There has been no suppres-
68 sion of competition.

(Opening Statement on Behalf of Certain Defendants, by Mr. Adcock.)

(And thereupon an adjournment was taken to Tuesday, February 15th, 1944, at the hour of 10:30 o'clock A. M.)

127 IN THE DISTRICT COURT OF THE UNITED STATES:

(Caption—4525)

Before Igoe, J&J
Tuesday, Feb. 15, 1944
10:30 o'clock A. M.

Court met pursuant to adjournment.

Present: As Before.

(Opening Statement to the Jury on behalf of certain Defendants—by Mr. O'Brien.)

(And thereupon an adjournment was taken to two o'clock P. M. of the same day, Tuesday, February 15, 1944.)

128 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

Before Igoe, J&J
Tuesday, Feb. 15, 1944,
2:00 o'clock P. M.

Court met pursuant to noon recess.

Present: As Before.

129 (And thereupon the following proceedings were had out of the presence and hearing of the jury:)

Mr. McConnell: You might mark these, while we are waiting. That is Plaintiffs' Exhibit 1, and Plaintiffs' Exhibit 2, and Plaintiffs' Exhibit 3.

(Thereupon said documents were marked Plaintiffs' Exhibits 1, 2 and 3 for identification.)

(Thereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: All right, sir. Are you ready to proceed?

Mr. McConnell: Yes, your Honor. If the Court please, I would like to call Mr. John E. Bloom as a witness.

JOHN EDWARD BLOOM, one of the plaintiffs herein, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please?
A. John Edward Bloom.
Q. And where do you live, Mr. Bloom?
130 A. 2551 Brentwood Street, Toledo, Ohio.
Q. And what is your business or occupation?
A. I am a layout man with the National Supply Company.
Q. And how long have you been so engaged?
A. Since September, 1942.
Q. And prior to that time what was your business or occupation?
A. I was employed by the Hayes Manufacturing Company of Grand Rapids, Michigan.
Q. And prior to that time?
A. I was the managing director in the Country Club Hotel, 6930 South Shore Drive, Chicago, Illinois.
Q. Did you have any ownership in this property?
A. Yes, I did.
Q. And what was the nature of your ownership?
Mr. Seeley: I object to that as immaterial.
The Court: Objection sustained.
Mr. McConnell: Q. Calling your attention to November 1st, 1936, did you have any negotiations preceding that date with Mr. Edward I. Bloom, with reference to the purchase of the Jackson Park Theatre property?
A. Yes, I did.
Q. And what were those negotiations?
Mr. Seeley: I object to that, if the Court please. Conversations between—
131 The Court: Objection sustained.
Mr. Seeley: (Continuing.) —the parties, not in the presence of any defendant.
Mr. McConnell: This is merely preliminary, if the Court please, to proof of ownership.
The Court: You just want to ask him whether he had negotiations. You are not asking him what the negotiations were?

Mr. O'Brien: Yes.

Mr. Seeley: Yes, he is. He asked him the other, first.

The Court: Oh. Why isn't that objection good?

Mr. McConnell: Q. Will you state what occurred on the first, or on the 28th day of October, 1936, if you recall?

A. That was approximately the time that my sisters, Florence B. Bigelow and Marion B. Koerber, my brother William C. Bloom, and myself, purchased from our father the property at 67th and Stony Island Avenue, known as the Jackson Park Building.

Q. What, if anything, did you do prior to that date with reference to the purchase of that property?

A. We had had discussions among ourselves and with our father in respect to purchasing this property.

132 Q. Did you make any investigation of the property?

A. Yes. We had investigated the property. I had personally, I know.

Q. And what had you done in the way of investigating the property?

A. I had gone over the property proper and investigated the physical assets that we were purchasing. I looked over a survey that was made. I looked over an appraisal that had been made. I discussed the situation with Mr. Richard Salkin.

Q. I show you a document which is marked for identification Plaintiffs' Exhibit 1, and ask you to examine that document and identify the signatures to it, if you can?

A. Do you want me to read the document or just identify it?

Q. No. If you can identify the signatures, do so.

A. Well, these signatures—well, I see the signatures of my sister Florence, my sister Marion, my brother William, my father, Edward I. Bloom, my mother, Marie C. Bloom, and the signature of myself, John E. Bloom.

Q. Is that all the signatures on the document?

A. That's all there are that I recognize. That is all the signatures there are on here, except across the face, written in ink, it says: "Consummated by, pay-

133 ment—"

Mr. Seeley: I object to reading from the document.

The Court: Objection sustained.

The Witness: Across the face are the signatures of E. I. Bloom and William C. Bloom.

Mr. McConnell: Q. Can you identify those signatures?

A. Yes, I can.

Mr. McConnell: I offer the document in evidence as Plaintiffs' Exhibit 1.

The Court: Is there any objection?

Mr. Seeley: Just a moment. Yes. On behalf of my clients I object to the introduction of the document because it refers to the purchase price of the property, which not only included the Theatre here in question, but other property contiguous to it.

I am willing to admit for our clients that these plaintiffs did purchase the property on or about that date, and that they consummated the transaction by payment. I do not think that these purchase price figures are relative testimony here.

Mr. O'Brien: I make the same objection.

Mr. Adcock: The same objection for me.

The Court: I think the document may be admitted merely for the purpose of showing they bought the
134 property on that date.

Mr. McConnell: That is all it is offered for, if the Court please.

Mr. Seeley: If that is all it is offered for, we will stipulate to that.

The Court: On a certain date—

Mr. McConnell: Are you speaking now for all defendants?

The Court: That on a certain date these four plaintiffs purchased that Theatre for a certain price.

Mr. O'Brien: See, it includes the Theatre and the other property.

The Court: Then, that they purchased the Theatre as of a certain date.

Mr. Seeley: Yes.

The Court: And whether they paid a certain price for it.

Mr. McConnell: I don't care what they paid for it.

The Court: Then it is stipulated—what is that date?

Mr. McConnell: That date is October 28th.

Mr. O'Brien: October 26th.

Mr. McConnell: 1936.

The Court: Then it is stipulated by all the parties to the litigation that on the date just mentioned the plain-
135 tiffs purchased the Theatre in question.

Mr. Seeley: Correct.

Mr. O'Brien: Well, they entered into a contract to pur-

chase it. I suppose the purchase was consummated at a later date, still it says here it was consummated on October 30th, 1936. We can agree to it.

(Said document, so offered, was received in evidence as PLAINTIFFS' EXHIBIT 1, and is in words and figures as follows, to-wit:)

136 Mr. McConnell: Q. Mr. Bloom, what interest in that property do you own, personally?

A. I own a one-quarter undivided interest in the property.

Q. And each of your sisters and your brother also own the same interest?

A. Each of them own the same interest that I do, yes, sir.

Q. And does that situation prevail today, at the time you are testifying?

A. It does.

Q. And has it prevailed during all the intervening time time since you acquired the property?

A. It has.

Q. What agreement, if any, do you have between your brother and your two sisters with reference to the operation of this property?

A. We hire a Manager, Mr. Richard Salkin, to operate the Theatre. I believe that is an answer to that question, is it? I would like to have that question read over again. May I?

Mr. McConnell: Read the question to the witness, please.

(Question read.)

The Court: By that you mean the Theatre prop-
137 erty, I take it?

Mr. McConnell: Yes, the Theatre property, if the Court please.

The Court: I think he has answered it. You said you hired a Manager named Richard what, Salkin?

The Witness: Yes, sir.

Mr. McConnell: Q. Do you have any active part yourself in the management of the Theatre property?

A. No, I do not.

Q. Have you ever had any active management with reference to the Theatre property?

A. I never have.

Q. Has there been discussion back and forth between

you and your brother and your sisters with reference to the management of the property?

A. Yes, there has been.

Q. What, if anything, did you know about the playing position of the Jackson Park Theatre at the time that you purchased the property?

A. I knew nothing about playing position at that time.

Mr. Adcock: I didn't get that.

The Court: "I knew nothing about playing position at that time."

Mr. McConnell: Q. When did you first learn of the
138 playing position of the Jackson Park Theatre?

A. Approximately in the summer of 1941.

Q. And through what source?

A. Through Mr. Richard Salkin, our Manager.

Q. Had Mr. Salkin discussed the management of the Theatre with you prior to that time?

A. Yes, he had.

Q. And over what period of time?

A. I would say he discussed it from time to time ever since we purchased the property. After all, we were the rightful owners, and we did discuss, we were the proper people to discuss management with our Manager.

Q. Did he discuss with you at any time the subject of declining earnings of the Jackson Park Theatre?

Mr. Seeley: I object to that, as calling for a conversation between these people and their Manager.

Mr. McConnell: The purpose of this, if the Court please, is to show this witness's knowledge, and what authority he gave to his Manager. I think I can show the agency.

The Court: He testified he and his two sisters and his brother employed a Manager. I don't understand any restrictions upon the employment. I do not think this
139 conversation between him and the Manager, outside the presence of the defendants, is admissible. Objection sustained.

Mr. McConnell: Q. Did you authorize Mr. Salkin to deal on your behalf for the purchase of film for the Jackson Park Theatre?

A. Yes, we had. That was Mr. Salkin's position in the Theatre. He was to purchase pictures, show the picture, employ the help we had hired there, keeping the Theatre respectable, in first class condition.

Q. Well, had he reported back to you the progress or lack of it of any negotiations for film?

Mr. Seeley: I object to that.

The Court: He may answer that.

A. Mr. Salkin would report back to us, naturally, that he could or could not get what he wanted to get. After all, we were desirous all the time to do what we could to make more money, and naturally when he didn't make more money, we would talk to him about it, and ask him why he was not making more money.

Mr. Adcock: I move to strike that.

The Court: The entire answer may be stricken out. Read the question again, please.

(Question read.)

140 A. Yes.

The Court: The answer is yes or no.

A. Yes, he had.

Mr. McConnell: Q. What had he reported to you?

Mr. O'Brien: That is objected to.

Mr. Seeley: I object.

Mr. O'Brien: What an agent reported to his principal certainly can not be binding on us. We were not present, anyhow.

The Court: How can that be competent against these defendants?

Mr. McConnell: Well, if the Court please, we will connect that up by conversations between the agent and the principal; and this is offered for the purpose of showing what knowledge the principal had.

The Court: A better way than that is to put on your agent and let him testify to these conversations. It is hearsay, isn't it, so far as this witness is concerned? He has testified he did have conversations with the Manager relative to the progress or lack of progress he was making in connection with running that Theatre. I think whatever conversation occurred between somebody representing you and the defendants here ought to be testified to by the

141 party who engaged in the conversation.

Mr. McConnell: Well, this is only offered to bring home knowledge to this witness, if the Court please.

The Court: All right.

Mr. McConnell: We will connect that up.

The Court: All right. Well, I think he did. He has had these conversations, he said. I will sustain the objection.

Mr. McConnell: Q. What did you do after—you say you learned about this situation in 1941. What did you do about it?

A. I went to see you about it. I did not see what we could do about our situation at the time, so I consulted with you.

Q. Had you consulted with your brother and your sisters before you saw me?

A. I don't believe I did.

Q. Subsequently did you consult with them about this subject matter?

A. Yes, I did.

Q. And after that what did you do?

A. Well, I discussed—I had my discussions with my brother and sisters, and we authorized a suit to be brought up.

Q. Have you been ready and willing and able at all
142 times during your ownership of this Theatre to pay an additional film rental for a prior run?

Mr. Seeley: I object to that, in view of his testimony that he had nothing whatever to do with running the Theatre, but delegated all those functions to his agent.

The Court: He may answer that question. The objection is overruled.

A. Yes, we did.

Mr. McConnell: Q. Well, were you ready, willing and able?

A. Yes, we were. We discussed that.

Q. And did you tell Mr. Salkin that?

Mr. Seeley: I object to that.

The Court: He may answer that.

A. Yes, we did.

Mr. McConnell: Q. You are one of the plaintiffs in this case?

A. Yes, I am.

Q. Now, do you also own property adjacent to the Jackson Park Theatre?

A. We own the property known as the Jackson Park Building, yes, which is adjacent to the Jackson Park Theatre.

143 Q. And of what does that property consist?

A. That consists of—adjacent to the Theater proper there are, I believe, six stores; over these stores there are dentists' and Doctors' offices, and over those

stores is contained a loft. That is from 6701 to 6709 Stony Island Avenue.

On 67th Street, going east, we own stores—the property contains stores from 1601 to, I believe, about 1623 East 67th Street, which contain stores. I believe there are ten of them. Over the stores is located a forty room hotel, I think is the size, on the second and third stories; and directly south, on Cornell Avenue, there are thirteen apartments, a three story structure also.

Q. Can you describe the nature of the district at 67th and Stony Island avenue; can you describe that district?

A. Well, I believe it is a nice district; nothing wrong with it.

Mr. O'Brien: I move to strike that.

Mr. Adcock: I move to strike it.

Mr. McConnell: Q. What is the nature of it; is it a business section?

A. It is a business section.

144 Mr. Adcock: I move that be stricken.

The Court: Well, the one where he said it is a nice district. Every one thinks his own district is a nice district, but that perhaps is not an answer to the question. That part of it may go out. You go ahead and describe it.

Mr. McConnell: All right.

Q. Describe the physical make-up of the district.

A. It is a business section along Stony Island Avenue, south. There are stores along 67th, west, there are stores, and east on 67th there are also stores contained in our building. Immediately to the east and south of the Theatre there is a well built up district of apartments, mostly three, six and twelve flats. Further on south, 69th street I would say, and further east, from approximately Constance avenue, it is residence district; directly west of the Theatre and to the south is built up with I would say three story structures in the main, and of course there is the Crest Hotel; to the north and west, at the northwest corner, in that triangle there, it is mostly two-story structures, because the Southmoor Hotel is contained at the corner, and north and east contains Jackson Park property, a city park.

145 Q. Do you know where the patronage of the Jackson Park Theatre is drawn from?

A. I would say that the majority of it is drawn from an area of a mile or two in that—from that locality; natu-

rally there is quite a few,—are quite a few people who drive automobiles, always a lot of traffic around there, I know that.

Q. What are the transportation facilities?

A. At the junction of—

Q. (Continuing.) —enjoyed by the Jackson Park?

A. It is a junction center, a transfer point of two street car lines, the 67th street line and also the Stony Island Avenue line, and also the terminal of a bus line that comes from down town, within one block. We have the Marquette Road bus line, and also the South Shore District bus line; and I would say half a mile away south, and half a mile west are the Illinois Central Railroad stations, at 67th Street and Stony Island proper, and three-fourths of a mile to the north I would say there is the termination of the Elevated line.

Q. Are you ready, willing and able to pay more money in the way of film rental than either the Maryland Theatre or the Jeffery Theatre, or both, if you are permitted
146 to bid for a prior run?

A. If we were permitted to bid for a prior run, we would be very willing to pay whatever was necessary to get that prior run. We do have the money, and we are willing and able to pay that.

Q. Has that always been true, that you have owned this Theatre?

A. It has been. We have been capable of paying that.

Q. Can you describe the Jackson Park Theatre?

A. The Jackson Park Theatre is a—I would call it a modern theatre. It has a foyer,—pardon me,—it has a lobby and a foyer, and an auditorium approximately ninety feet by 125 feet, containing 1452 seats, I believe it is, 1458 or '52, I don't really know which it is.

Q. What kind of projection equipment do you have?

A. We have leased equipment. I don't know the Company that we lease it from. I believe that it was General Electric. I believe it now is, but I am not positive on that point. It is modern, I know that.

Q. Do you have sound equipment?

A. Oh, yes.

Q. And is the Theatre refrigerated?

A. The Theatre is refrigerated, yes, sir.

147 Q. Is it air-conditioned?

A. Yes, sir, I would say it was.

Mr. McConnell: You may cross-examine.

148 *Cross-Examination by Mr. Seeley.*

Q. Mr. Bloom, prior to the time when you and your brother and sisters purchased this Theatre had you ever had any experience in the operation of a motion picture theatre?

A. I never had, no, sir.

Q. You testified, I believe, that you learned of the playing position of the Jackson Park Theatre in 1941?

A. I would say that, approximately, yes.

Q. Before that you did not know what the playing position was?

A. No, I did not, not that I recall, now.

Q. And yet you were ready, able and willing at all times to pay more money for a different playing position, is that right?

A. Yes, I would say so.

Q. For what different playing position?

A. Well, after all I did not manage the Theatre. Our Manager was Mr. Salkin.

Q. I see.

A. Mr. Salkin had requested—

Mr. Seeley: No.

The Witness: Discussed—

Mr. Seeley: No. You have answered the question.

149 The Witness: Pardon me. I am sorry.

Mr. Seeley: Q. Do you know how much film rental the Maryland Theatre pays per year at the present time?

A. No, I don't.

Q. But whatever it is, you are willing to pay more?

A. I would say so, yes.

Q. How do you know that you could afford to pay more?

A. We had that much money in the bank. We are willing to help ourselves as much as possible if our Manager would desire that.

Q. Would you be willing to pay that even if it resulted in operating your Theatre at a loss?

A. If it meant operating our Theatre at a loss, I don't believe I would be willing to, no.

Q. I see. You mentioned the area in which you believe the Jackson Park Theatre drew its patronage. How do you know that that is the area from which people come to the Jackson Park?

A. Oh, I know that wherever I have ever lived I have always been willing to drive several miles to go to the Theatre.

Q. And on that you base your conclusion that people within a radius of several miles of the Jackson Park are the ones from which it draws its patronage, is that it?

150 A. That is correct.

Q. About how many miles would you say that radius would be?

A. I believe I answered before, several miles, did I not?

Q. Yes. I wondered how many you had in mind when you said "several"?

A. I know when I was living in Chicago I lived at 6930 South Shore Drive. I know that I have gone to the Capitol. I know that I have gone to the Southtown. I know I have gone to the Beverly. I have gone to the Grove. I have gone to the Shore. I have gone to the Jeffery.

Q. Did you ever make any investigation in connection with the Jackson Park Theatre to determine just where the people actually did come from who attended that Theatre?

A. I never did, personally.

Mr. Seeley: I have no further questions. Some of the other counsel may.

151 *Cross-Examination by Mr. O'Brien.*

Q. How many of the offices in the building are vacant at this time?

A. I could not tell you that.

Q. Does Mr. Salkin manage the building, as well as the Theatre?

A. No, he does not; just the Theatre.

Q. And who does manage the building?

A. I believe Sidney Smith still manages the building.

Q. Does he not also make reports to you as to the building, just as Mr. Salkin does about the Theatre?

A. Mr. Smith does not, now, no. Mr. Salkin does not, either, now.

Q. Who does?

A. My brother Bill, William.

Q. Whatever he did report on that you did not carry in your mind for today, did you?

A. I didn't understand that.

Q. Whatever the last report was in respect to vacancies, you are not able to tell us at this time?

A. No, I am not.

Q. Do you know how many vacancies there are in the stores?

A. Yes.

152 Q. How many?

A. There are one,—I believe three. I believe there are four vacancies.

Q. And does that include the corner store in which the drug store used to operate?

A. Yes, sir.

Q. For how long has that been vacant?

A. I don't recall how long it has been vacant.

Q. Would you say it was a year?

A. I would say it was longer than a year.

Q. And can you tell us who last occupied it?

A. I don't remember the man's name.

Q. Can you tell us how long he was there before he left, and before the store last became vacant?

A. No, I can't, at the moment.

Q. Do you know who was in there before him?

A. Hartman's Drug Store.

Q. How long did it operate or try to operate a drug store?

A. I don't recall.

Q. Do you know who was there before Hartman's?

A. Walgreen's Drug Store.

Q. And Walgreen's left, also?

A. Pardon me?

Q. And Walgreen's left, too?

153 A. Their lease terminated, yes.

Q. And then they left?

A. Yes, sir.

Q. There is a cemetery to the west, is there not?

A. Yes, there is.

Q. What is the name of it?

A. Oakwoods Cemetery.

Q. And how far south of 67th Street does it extend, do you recall?

A. To 71st street.

Q. And the Park, of course, extends from Stony Island to the Lake?

A. Yes, sir, it does.

Q. And it is true, isn't it, that there are many homes, residences, in the section called the Highlands to the east of Stony Island avenue, between 67th and 71st?

A. I said there were, at the other side of Constance Avenue, yes.

Q. Yes.

A. And Jeffery.

Q. Did you live in Chicago in 1936?

A. 1936? I did.

Q. From time to time did you attend the theatre?

A. Yes, I did. The Jackson Park you are referring to?

Q. Yes, sir. And the other theatres through the neighborhood, as you have told the jury?

154 A. Yes, I have.

Q. And did you observe that in 1936 some of those theatres were double featuring?

A. I don't recall that, at present.

Q. Would you say that you did not observe?

A. I would say I—the only thing I remember on that subject is that some theatres did run double features, but that I was not observable, personally.

Q. Well, now, before you and your brother and sisters purchased the property, you say you looked into the situation to some extent?

A. Yes, we did.

Q. Did you do that—you say "we". I am speaking merely of you at the moment.

A. All right, sir.

Q. It was you personally who looked into it, was it not?

A. I looked into it personally.

Q. Now, was that solely on your own behalf or for the others, as well?

A. We always worked together, the four of us. My brother, from time to time, made suggestions, and I would make suggestions, and we would talk things over with our sisters then.

155 Q. You mean after you acquired the property?

A. And before we acquired the property; all our lives we have.

Q. All right. Now, I am interested in what it was investigated about this property, and who did it. Did you do it for everybody, or did they look into it, too?

A. What investigation? I don't understand you.

Q. You say that you looked at some appraisals, that

you went out and looked over the physical condition of the premises, and that you did other things before you put your money into this property?

A. Yes.

Q. Is that correct?

A. Yes, sir.

Q. Now, I want to know whether you were acting for yourself and for your brother and two sisters, or whether you were just checking on your own hook, for your own information?

A. I can not recall at present.

Q. Do you know whether they looked into it, too, themselves?

A. I don't recall.

Q. All right. Now, did you look at the books of the Theatre to see how it was doing?

156 A. I don't recall that, either.

Q. Did you make any inquiry as to the distributors from whom it was buying film?

A. I don't remember doing that.

Q. Was this examination made for the purpose of determining whether you would or would not buy the property?

A. Yes, it was.

Q. Did anybody advise you other than Mr. Salkin?

A. Mr. Salkin advised us. I would say that he was the only one interested in theatres; he did advise us.

Q. Anybody, whether he was interested in theatres or not, did you seek the advice of anyone?

A. I don't recall seeking the advice of anybody.

Q. Would you say that your father knew the playing position of the house?

A. I don't know what he knew, then.

Q. Would you say that he did not tell you in what position the house was playing?

A. I would say that, I believe.

Q. Are you sure?

A. I am not positive, no.

Mr. O'Brien: That is all.

157 *Cross-Examination by Mr. Adcock.*

Q. You say the Theatre is air conditioned and also refrigerated?

A. Yes, sir.

Q. When was the refrigeration unit put in?

A. I don't recall.
Q. Was it in 1938?
A. I would say approximately.
Q. And what was the nature of that refrigeration unit?
A. How do you mean, what was the nature of it?
Q. Well, what did it seek to accomplish by its operation when it was put in?
A. It was put in to cool the house, make the house cooler in the summer time.
Q. Before that time did you have any means of cooling the air mechanically in the Theatre?
A. Well, we had a washed air system that cooled the air.
Q. That was a system which may be called a washing air system, isn't it?
A. That is correct.
Q. And whatever cooling was accomplished, was accomplished through the use of water from the hydrant, is that right?
158 A. Water from Lake Michigan, yes sir.
Q. And it came to your Theatre through the pipes and water mains, is that correct?
A. Yes.
Q. Do you know when that was put in?
A. No, I don't.
Q. You don't remember whether it was in 1935, the fall of 1935?
A. No, I don't remember.
Q. How far is the Cemetery west of Stony Island Avenue?
A. I would say approximately half a mile.
Q. Is it more or less than half a mile?
A. I couldn't say; I don't know.
Q. About three blocks, isn't it?
A. I would say four blocks, in my memory now.
Q. Well, there is between the Cemetery and Stony Island Avenue the Illinois Central right of way, is there not?
A. Yes, there is.
Q. You spoke of residences east of Stony Island Avenue, and east of the Theatre. What character of residences are they, are they apartments or homes, single dwellings?
A. In what particular section east of Stony Island Avenue?

159 Q. Well, immediately east.

A. Immediately east they are, mostly contain three, six and twelve flat buildings.

Q. For how long?

A. I would say to—

Q. Or how far, rather?

A. To—do you want to know the blocks?

Q. Well, approximately, yes.

A. Five blocks.

Q. And how far south does that character of residences extend?

A. From 71st stret, I would say.

Q. All the way?

A. I know there is large buildings all the way to 71st street. They are not solid, naturally.

Q. Along 67th street, on the south side of 67th Street, there is considerable vacant property, isn't there, as far east as Jeffery?

A. The other side of,—that is that residential district you are speaking of now?

Q. Yes.

A. Yes, from Constance to Jeffery, which is a matter of three blocks, there are some vacant properties there, in the residential district.

Q. You have nothing to do, as I understand it, with the rental of the property that you own there, that
160 is, the stores, vacant stores that you have, is that right?

A. No, I don't.

Q. You don't know what the rental is that the stores are offered for, do you?

A. I know approximately what we used to get for them, but I don't know—

Q. No. I am asking you what they are being offered for.

A. Pardon me. I don't know what they are being offered for now.

Q. That is, by you?

A. No, I don't.

Q. You don't know anything about that?

A. That is handled by our agent.

Mr. Adcock: I think that is all.

The Court: Call the next witness.

Mr. McConnell: I got a few questions.

The Court: I beg your pardon.
Mr. McConnell: On re-direct.

161 *Redirect Examination by Mr. McConnell.*

Q. Now, you testified, Mr. Bloom, Walgreen's drug store left your building. Do you know where Walgreen's drug store went?
A. They didn't go any place; they just—
Q. Isn't there a Walgreen drug store across the street, now?
A. That was there previously.
Q. There is a Walgreen drug store there?
A. Yes, there is.
Q. At the present time?
A. Yes.
Q. Now, is there any mortgage or encumbrance of any kind on that property that you own there at 67th and Stony Island Avenue?
A. No, there is not. We own it free and clear.
Q. And you do not lease the Theatre? You have no lease with the Theatre as such; isn't that correct?
A. Oh, no, no, we do not.
Q. So that Theatre is not charged with any rental for a lease payment at all?
A. That is correct.
Q. So there are no fixed charges against your theatre property except the ordinary expenses of operating a moving picture theatre?
162 A. That is correct.
Q. You testified that you would not operate the theatre at a loss; that is, you would not bid for a prior run if it meant operating the theatre at a loss?
Mr. Adcock: I don't think he said that.
Mr. McConnell: I think in response to a question on cross-examination by Mr. Seeley, he did.
Q. Could you tell, or would you say that you could pay more money for the prior run if it was shown to you that the Maryland Theatre paid a rental of $75,000 a year?
Mr. Seeley: I object to that as hypothetical.
The Court: Objection sustained.
Mr. O'Brien: I want to note that there is an additional ground, although it has been ruled on, that the witness is patently not qualified to say anything that calls for a matter of opinion on this subject.

The Court: Do you want me to sustain it on that ground?

Mr. McConnell: I think that is all.

The Court: Any further questions of this witness?

Mr. Seeley: No.

The Court: All right, Mr. Witness. Call the next witness, please.

(Witness excused.)

163 FLORENCE BLOOM BIGELOW, one of the plaintiffs herein, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination, by Mr. McConnell.

Q. Will you state your full name, please?

A. Florence Bloom Bigelow.

Q. And where do you live, Mrs. Bigelow?

A. 7854 Merrill Avenue, in Chicago.

Q. What is your business or occupation?

A. Housewife.

Q. And you have no other business or occupation?

A. No.

The Court: Do the jurors hear this witness? Speak a little louder.

The Witness: I am sorry. Housewife.

Mr. McConnell: Q. Calling your attention to the date of October 30th, 1936, will you tell the Court and jury what occurred on that day?

A. Why, my brothers and sister and I purchased the property and issue from our parents.

Q. And what did that property include, generally?

A. The Jackson Park Theatre—well, the Jackson
164 Park Building, the Jackson Park Theatre, and the stores, offices, and apartment hotel, and apartments.

Q. And what interest do you own?

A. A one-fourth undivided interest.

Q. In that entire property?

A. In that entire property, yes.

Q. And is the property free and clear of any encumbrances?

A. Yes, it is.

Q. At the present time?

A. Yes.

Q. Now, did you authorize anybody to act for you with reference to the operation of the Jackson Park Theatre?

A. Yes. Mr. Richard Salkin.

Q. And he has so operated, has he, or so acted, has he, during the entire time of your ownership, is that correct?

A. Yes, sir.

Q. Were you ready and willing and able at all times, from the time that you purchased this Theatre property down to date, to pay as much or more for film rental—

A. Yes, we were.

Q. (Continuing.) —than the Maryland or Jeffery

165 Theatre?

A. Yes.

Mr. O'Brien: Excuse me. I have an objection to that, your Honor, unless it appears what the Jeffery and the Maryland were paying, or that the witness knows what they were paying.

The Court: Well, unless that appears in evidence, why isn't that objection good?

Mr. McConnell: Well, if the Court please, it is the contention of the plaintiffs here, and the proof will show, that we have never had a chance to make a bid, they will not receive a bid.

The Court: Well, I know, but how can this witness—

Mr. O'Brien: So what?

The Court: (Continuing.) —intelligently tell the jury she is willing to pay more than the other two Theatres that you have mentioned, without her telling the jury what the other two Theatres paid? That is the basis of your objection, I take it, Mr. O'Brien?

Mr. O'Brien: Yes, that is it precisely. I have no objection to her stating what they would pay in terms of money.

Mr. McConnell: Well, I call then on—You gave me a statement of the Maryland. Have you got a copy of that statement here (addressing Mr. Adcock)?

Mr. Adcock: I don't think I have, no.

166 Mr. McConnell: Q. Have you been ready and willing and able to pay as much as $150,000 a year for the film rental if you could have a C run or prior run for the Jackson Park?

A. I believe so.

Q. And would you pay that amount at the present time?

A. Yes.

Q. If you were given a chance to get that run?

A. Yes.

Mr. O'Brien: I object to that, too, your Honor. That is too hypothetical. There is not any binding offer in that sort of thing, although it might so appear to a jury.

The Court: Well, I take it he is going to make connection between that sort of testimony and the rest of the case.

Mr. McConnell: I am going to connect it up.

The Court: As he goes along. The objection will be overruled.

Mr. McConnell: You may cross-examine.

167 *Cross-Examination by Mr. Seeley.*

Q. Mrs. Bigelow, when did you first know what the playing position of the Jackson Park Theatre is?

A. When I was about eight years old.

Q. And at the time that you and your sister and brothers bought the property, what was its playing position?

A. It wasn't good. It was worse than it was when I was eight years old, I would say.

Mr. Seeley: I ask that that be stricken.

The Court: That may go out.

Mr. Seeley: Q. Can you identify the playing position of the Jackson Park Theatre at the time that it was purchased by you and your sister and brothers?

A. Pardon me?

Q. Can you identify or describe the playing position of the Theatre on October 30th, 1936?

A. Well, it was behind all of the large chain theatres.

Q. Can you name the theatres which it was behind?

A. Oh, yes. All the ones that have been mentioned here, the Jeffery, the Avalon, and Tower, Maryland, and Tivoli, Southtown, Capitol.

168 Q. And how far was it behind the Maryland Theatre?

A. I don't know exactly at that time, how much behind it was then.

Q. Do you know how far it was behind the Jeffery Theatre?

A. No, I don't.

Q. $150,000 a year would be about, almost $3,000 a week, would it not?

A. Yes.

Q. Do you know about how much per week you pay now for film rentals?

A. I know how much we pay for one run, or one movie, sometimes.

Q. No.

A. But I don't know the overall average.

Q. Over a year?

A. Over a year, per week.

Q. Then you don't know how much it would increase the expenses of operating the Jackson Park to pay $3,000 a week for film, do you?

A. I have a fair, general idea.

Q. How much do you think it would increase the expense?

A. I would have to think faster than I can figure for that. It would increase it a great deal.

169 Q. A great deal. And for what prior runs would you be ready and willing to pay $3,000 a week?

A. Well, the run would not be as important as the ability to buy pictures as we wanted them.

Q. Well, how do you want them?

A. We want to buy them as I go out and buy a hat, what I want, before anybody else wants it, and in competition, you might say, in an open market.

Q. I see.

A. And that is what this is all about.

Q. Well, do you want to buy these pictures, for instance, ahead of the Tivoli Theatre?

A. Well, I don't see why we should not.

Q. For $3,000 a week?

A. I think it would be worth our while, yes.

Q. Have you any idea how much film rental the Tivoli pays a week?

A. Yes.

Q. How much?

A. Well, Mr. Adcock said yesterday they paid $5,000 a week for the Chicago Theatre, isn't that what he said? I know how much you can make on a good movie on one night, in the Jackson Park Theatre.

Q. Are they all that good?

170 A. Well, they used to be. I can remember when they were.

Q. When motion pictures were operated in the old days, do you think?

A. They made a lot of money.

Q. Have you any idea what the total weekly expense of operating the Jackson Park Theatre is?

A. I have a pretty good general idea.

Q. How much?

A. Several hundred dollars. I may be wrong.

Q. How much income from theatre admissions per week does that Theatre have at the present time?

A. I could not say that offhand.

Q. Well, of course you would not want to pay $3,000 a week film rental if it meant your expenses each week were greater than what you could take in, would you?

A. Well, a lot of things would enter into that, naturally.

Q. Now, answer the question. Would you want to pay $3,000 a week if it meant operating the Theatre at a loss?

A. No. That would not be sensible.

Q. Well, have you ever made any study of the operations of that Theatre, to determine for yourself how
171 much it could take in if it had an earlier run?

A. No.

Mr. Seeley: I think that is all.

172 *Cross-Examination by Mr. O'Brien.*

Q. Mrs. Bigelow, you really don't pay much attention to the details of the running of this Theatre, do you?

A. Actively I don't, no. I do, though—

Q. That is, you yourself?

A. No. I don't go over to the Theatre, look at the books or contracts, things like that.

Q. And you have not done so since 1936, have you?

A. No, I have not.

Q. When you speak of $3,000 a week, were you speaking of $3,000 to one distributor for one picture, or how many pictures?

A. Well, of course there are so many things that enter into that, that is beyond saying, don't you think?

Mr. O'Brien: I do. That is what puzzles me.

The Witness: We would be able to make any good business deal where we feel it would be advantageous to us and to the running of the theatre, and making more money.

Q. Whether it would be advantageous would depend upon what the operating ability of the Theatre was, and what it had done in the past, as shown by the books, wouldn't it?

173 A. Yes.

Q. Now, how did you determine in your own mind that you might offer as much as $3,000 a week for pictures?

A. Well, I believe that the movie has made a thousand dollars a day; and I remember, I think I am correct, and I might be wrong, but I am pretty sure I am correct, at times it has made as much as a thousand dollars a day.

Q. You say "made" that much. Do you mean taken in at the box office?

A. Well, that would be a vague answer that I would make, too.

Q. Well, you sort of meant how much comes into that box office, is that it?

A. Well, I wouldn't know. I know there have been times when it has made a thousand dollars a day, and I shouldn't say that when I don't know, I suppose.

Q. You don't really know that, do you?

A. No. I know it made a thousand dollars a day.

Q. How do you know?

A. My Dad used to come home and be very pleased about it, very proud.

Q. You mean he told you?

A. Yes. Well, naturally, we were a family, and we

174 were all interested. We were all movie fans.

Mr. O'Brien: I move to strike that.

Mr. McConnell: I object to that.

The Court: About they being fans?

Mr. McConnell: She said members of the family. He asked her how she knew.

The Court: I think that answer may stand. You asked how she knew, and she said her father came home, and they were all members of a happy family.

Mr. O'Brien: That is not my objection. My objection is to strike the testimony about theatres making a thousand dollars a day, because it now appears to have been predicated upon something her father told her, not something which she herself knows, when she said she testified—

The Court: Technically that is a good motion.

Mr. McConnell: Well, he asked the question, if the Court please, as to how she knew.

The Court: He asked the question to find out the source of her knowledge, and having found it as hearsay he moves now to strike it out.

Mr. O'Brien: Exactly.

The Court: The motion will be allowed.

Mr. O'Brien: Q. Now, you say that you did know
175 that other houses played behind the large chain theatres. Do you include the Piccadilly Theatre in that?

A. Yes.

Q. And is the Piccadilly owned by Warners or Balaban & Katz?

A. I have a notion it is owned by Warners.

Q. I see. But you do know it is a big house?

A. Yes.

Q. If it is not owned by any of the defendants here, but is owned by an independent exhibitor, then you would withdraw your statement that you—

A. Pardon me. If it is owned by an independent?

Q. Yes. It is owned by Schoenstadts, isn't it?

A. I known it used to be owned by Lubliner & Trinz, wasn't it, somebody like that?

Q. Well, you don't know who owns it?

A. No. I thought it was owned by Warner Bros. now.

Q. I see.

A. It is somewhat out of our neighborhood.

Q. Did somebody tell you that Warner Bros. or Balaban & Katz own all the big theatres?

A. No, oh, no. I look at the ads in the paper.

Q. Do you know who owns the Esquire?

A. Yes.

Q. Who?

A. Mr. Balaban.

176 Q. Balaban & Katz?

A. Harry Balaban. Isn't that correct?

Q. Oh, Harry. And do you know who owns the Stratford?

A. No, I do not.

Q. Now, did you mean $3,000 a week for all of the product that Theatre would need, that is, $3,000 to one distributor or $3,000 to all of the distributors?

A. Well, there would be so many things that would enter into a deal of that kind that I do not believe I am qualified to say what.

Mr. O'Brien: All right. That is all.
Mr. Adcock: I have nothing.
The Court: Any questions, Mr. McConnell?
Mr. McConnell: Yes, if the Court please.

177 *Redirect Examination by Mr. McConnell.*

Q. Mrs. Bigelow, you said that in the early days the Jackson Park played behind the Avalon and the Tivoli. Do you recall how many weeks back of the Avalon and Tivoli it played?
A. Very shortly.
Q. Just one week, was it not?
A. Yes. Very—a matter of days.
Mr. Adcock: I object to that question. "Just one week, was it not?", as slightly leading.
The Court: Sustained. Leading.
Mr. McConnell: Q. Do you have an idea of the—or do you recall how much the Theatre was making in those early days, if you know?
Mr. Seeley: What early days?
Mr. McConnell: From the time she said, when she was a child, when she heard of the earnings of the Theatre.
Mr. O'Brien: The Court struck that answer as being based on hearsay, and that is the only source of her knowledge. I object to it.
The Court: That is the part that went out. You can inquire if she knows of her own personal knowledge, how much it was.
178 Mr. McConnell: That was the question, if she knew of her own knowledge.
The Witness: I wouldn't like to say that definitely. I don't know if it is my own personal knowledge or not.
Q. Are you willing to bid at the present time against the Maryland and the Jeffery Theatres for a run on the south side?
Mr. O'Brien: Objected to as immaterial. It doesn't make any difference as a matter of law whether she is willing to bid or is not, there is not any—
The Court: Objection sustained.
Mr. McConnell: That is all.
(Witness excused.)

179 RICHARD SALKIN, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please?
A. Richard Salkin.
Q. And where do you live, Mr. Salkin?
A. 7831 Wabash Avenue.
Q. And what is your business or occupation?
A. Manager of the Jackson Park Theatre.
Q. How long have you been Manager of the Jackson Park Theatre?
A. Since 1927.
Q. And prior to that what was your business or occupation?
A. Motion picture salesman. Theatre owner, and theatre manager.
Q. Have you been in the motion picture business all your business life?
A. Yes, sir.
Q. Have you ever been in any activity in the motion picture industry aside from an exhibitor?
A. Yes, sir; salesman.
180 Q. And with what Company?
A. Fox, Twentieth Century-Fox, Goldwyn, RKO, Universal, Tiffany Pictures, Gothic Pictures, and Goldwyn I mentioned.
Q. Now, at the time that you first became Manager of the Jackson Park Theatre, who was the owner of that Theatre?
A. Edward I. Bloom.
Q. And what were your duties at that time?
A. To operate the Theatre, manage it, buy motion pictures.
Q. And in buying motion pictures, will you tell the Court and jury what generally you did?
A. I contacted film companies, or they contacted me, and I made deals to buy motion pictures that they had for sale.
Q. And at that time in what position was the Jackson Park Theatre playing?

Mr. O'Brien: At what time, please?

Mr. McConnell: At the time he first became Manager of the Jackson Park.

A. It was known as a first week theatre.

Mr. O'Brien: I object to what it was known.

The Witness: That is how we bought, a first week theatre, sir.

181 Mr. O'Brien: Beg pardon?

The Witness: That is as a first week theatre we bought film.

Mr. O'Brien: All right.

Mr. McConnell: Q. After you became Manager did you have any negotiations with the film companies with reference to changing that playing position?

A. At all times, as Manager of the Jackson Park Theatre, I tried to better my playing position.

Mr. Seeley: I object to that.

Mr. Adcock: I object.

Mr. Seeley: The answer is yes or no to the question.

The Court: His conclusion, as to what he tried, may go out.

Mr. McConnell: You can answer that question yes or no.

Mr. Adcock: He stated "at all times". He asked him of this particular time.

The Court: Strike out the conclusion part, yes. "At all times" doesn't mean anything, does it?

Mr. McConnell: Answer it yes or no, please.

A. Yes.

Q. And at whose instructions?

A. Well, the instructions of the owner to try to

182 better my business.

Q. All right. Now, when did you first have negotiations with the film companies or their agents, with reference to a better playing position for the Jackson Park Theatre?

A. When we would get into our buying season of motion pictures, at that time we were buying a year's product, which we generally started negotiating for in about July and ran sometimes until October and November for the year's product. I went into the Jackson Park in 1927, and if my mind is right, the product was bought for that year, and the following year I started to buy my own product for the Theatre.

Q. Now, do you remember the names of the people with whom you negotiated?

A. The individual names or the companies, sir?

Q. Individuals?

A. The individuals.

Q. When you first started in 1927, or during your first buying season, who did you negotiate with, what individuals?

A. Well, with Fox, Mr. Loeb. With Paramount, Mr. Smith. With Warner Bros., at that time, I can not recall Warner Bros.,—

183 Q. Well, the two—the first gentleman you mentioned, did you have some negotiations with him with reference to the playing position?

Mr. Adcock: Let me have that. What was the question? I couldn't hear.

(Question read).

A. Yes.

Mr. McConnell: All right.

Q. What was said?

A. Well,—

Mr. Adcock: I think the time and place should be specified before he asks a question as to what was said.

The Court: He said at the time, back in 1928, I thought.

Mr. Adcock: Well, I don't know.

Mr. McConnell: The buying season of 1928, he said.

The Court: I think that is what he said. Is that right, Mr. Witness?

The Witness: Yes, sir. At that time I explained to the salesman that I thought the reason our business in the Jackson Park was not good is because all theatres around us were playing pictures, and what is known as milking the pictures, and I was trying to better my playing

184 position in that Theatre, to move up and play pictures in a newer playing position.

Mr. McConnell: Q. What did he say?

A. He told me—

Mr. Adcock: I think the answer should be stricken. He says at that time, "I explained to the salesman", as I understand it. I don't know whether it is plural or singular, that he is supposed to have been talking to.

The Court: He is talking about a man by the name of Mr. Fox.

Mr. Adcock: No, no.

The Court: I presume that is singular.

Mr. Adcock: No. Mr. Loeb, he is talking about.

The Court: Who are you talking about?

The Witness: Mr. Loeb, who represented Fox, Twentieth Century-Fox.

The Court: Oh, the question referred to Fox.

Mr. Adcock: From the question you could not tell whether he talked to Mr. Loeb or not, or from the answer—

The Court: I thought he would straighten that out. He has referred to two salesmen there, and you have cut it down to one, is that right?

Mr. McConnell: That is right.

185 The Court: Now, he is talking about one. I got Fox and Loeb mixed up. Loeb represented the Fox Film Company. Is that your story?

The Witness: That is right, sir.

Mr. McConnell: Read the witness's answer, to what he has testified, so far, and then go on from there, please.

(Record read).

The Witness: (Continuing:) That he could not change my playing position, that I was known as a first week theatre, that I could not be changed, and he had sold the previous theatres at a future date ahead of me, with protection from the Jackson Park, and there was no way for him to change that playing position.

Mr. McConnell: Q. Now, did you have a similar conversation with other salesmen?

A. Yes, sir.

Q. And when?

A. All during the buying season of 1928, for 1928 and '29 product.

Q. Well, can you tell us the names of the people that you talked with?

A. Mr. Smith of Paramount; Warner Bros. salesman, who I don't recall who he was, Metro-Goldwyn salesman, and United Artists salesman, Universal salesman,

186 Columbia salesman, and all salesmen that I dealt with for product for the Jackson Park Theatre.

187 Mr. Adcock: I move to strike the answer. He has not given the name of the person with whom he talked.

The Court: He has given several names and then he said other names he could not remember.

Mr. O'Brien: I make a similar motion on behalf of Warners and Vitagraph. When he says Warners I assume

he means Vitagraph. He cannot remember the name of the salesman, and, furthermore, there is nothing here to show that a salesman has any authority in the negotiations of a year's product, which is the thing he is talking about. That is done with a manager, not with a salesman.

The Witness: Just a minute. I always dealt with a salesman. They always had a salesman in the territory. No manager ever made a deal with me.

Mr. O'Brien: You mean for a whole year?

The Witness: A. Yes, sir.

Mr. O'Brien: Q. And you don't remember who the salesman was?

The Witness: Well, there has been maybe with Warners there has been in the last fourteen years 15 salesmen. I mean them salesmen don't stay with any one company. If I was to keep track of every salesman I dealt with since 1927 I would have two hundred salesmen to re-
188 member every date and deal I made. Now you have a record of all them contracts that they got that we could get them salesmen's names off of.

Mr. McConnell: Q. Well, you don't remember?

Mr. Addock: If he cannot remember the names of the salesmen with whom he talked, there is no chance for us to meet any such statement as that. He must name the person with whom he talked, what was said, and the conversation.

The Court: The objection is overruled.

Mr. McConnell: All right, what is the question? Read the question to the witness.

The Court: I think he answered the question.

Mr. McConnell: Q. Now after the year 1928-1929, did you again have negotiations?

The Witness: A. Yes, I dealt with every company again every year and as long as I was in the Jackson Park Theatre buying product.

Q. Well, now, have you always done all the buying of product in the Jackson Park since you have been there?

A. No, I have not, sir. In 1933 we joined the Floyd Brockell Circuit, a circuit of independent theatre operators who tried to help us in buying motion pictures, and I was with Floyd Brockell until 1937, until Floyd
189 Brockell was killed, and then I went into the Allied as a booking, but doing my own buying, with the cooperation of Mr. Mager that was formerly with Floyd Brockell.

Q. When did Mr. Mager start with you to represent the Jackson Park Theatre?

A. Well, Mr. Mager never represented me. He sat in with me from 1937 and gave me his knowledge and his assistance in making my deals.

Q. All right. Now, starting with 1937, what negotiations did you have for the purchase of film?

A. I can't quite get the question.

Q. After November 1st, 1936, did you continue to be employed as the manager of the Jackson Park Theatre?

A. Yes, sir.

Q. And by whom were you employed?

A. By the Bloom children, William G., John E., Miss Koerber, and Mrs. Bigelow.

Q. And what, if anything, did you do after that time with reference to obtaining a different playing position for the Jackson Park?

A. At all times when I was buying motion pictures 190 I tried to buy a better playing position, but I never was able to only in maybe one or two instances.

Mr. Seeley: I move the answer be stricken as a conclusion.

The Court: The motion is allowed and the answer stricken. He may state what he did.

Mr. McConnell: You may state what you did. Did you enter into negotiations?

The Witness: A. Yes, sir.

Q. All right. Now starting with '37 with whom did you have negotiations representing the Twentieth Century-Fox?

A. Harold Loeb, Mr. Eckhardt, at times, very seldom, who sat in as resident manager.

Q. In 1937 what time of the year did you enter into negotiations with Mr. Loeb?

A. We started negotiations in about June.

Q. Where was your first talk with him?

A. He called on me at the theatre.

Q. Who was present?

A. Mr. Loeb and myself.

Q. All right. Was anything said there about a prior run for the Jackson Park Theatre?

A. I had said something to him, but he told me I could not—

191 Mr. McConnell: Just answer the question yes or no. Was anything said with reference to that subject?

The Witness: A. Yes, sir.

Mr. McConnell: Q. All right. Now what was said and by whom?

A. I had said that I would like to get a product with a newer and earlier release date.

Q. What did he say?

A. He says he could not sell me, as they had sold the opposition circuits ahead of me.

Q. Did he mention their names?

A. Warners and Balaban & Katz.

Q. All right. In that same buying season or same year did you have any talk with any salesman or any representative of Warner Brothers, or Vitagraph rather, who was distributor for Warner Brothers?

A. Yes, sir.

Q. And who?

A. I am pretty sure Sid Rose was manager at that time, I mean salesman at that time.

Q. Do you know where that talk was?

A. The first talk was at the theatre. I think the second was in Mager's office at Allied Theatres.

Q. Who was present?

A. Mr. Mager, Mr. Rose, and myself.

192 Q. All right, and what was said?

A. We talked about the product and about the deal. The deal he wanted—

Mr. Seeley: I move that be stricken as a conclusion.

The Court: Give the conversation, rather than your conclusion.

The Witness: Well, I just asked him, after we worked on making a deal I asked why we could not be worked up, my business was not good and I wanted to try to better my playing position.

Mr. McConnell:

Q. What did he say?

A. He could not sell me any other position than first week.

Q. Did he say why?

A. Because the circuits around me had bought with protection on.

Q. All right. Did you talk with any representative or salesman from Loew's?

A. Teddy Mendelson.
Q. Where was that talk?
A. The first talk was in the theatre.
Q. Who was present?
A. Myself and Mr. Mendelson.
Q. What was said?

A. He would try to sell me their product for the
193 next year and we talked about the product, about the price, and I would ask for a better playing position. He told me I could not be changed in my playing position, I knew where I played and that's the only place I could play.

Q. Did you have any talk with any salesman or representative from Paramount?
A. Yes, I did, sir.
Q. Where was that?
A. The first talk I think was in the Paramount office and I am pretty sure Harold Wirthwein was salesman at the time.
Q. What was said? Is that all that was present, just you and Wirthwein?
A. That is right.
Q. What was said?
A. The subject was about the price and about the playing position I was playing in. I told him I would give him the prices or give him an increase in price for a better playing position, but not the playing position I was in. We were arguing about the prices, but he told me he could not change my playing position, as the circuits ahead of me had the product bought and it was just a matter of dealing for the position I was in and had to stay in.

194 Q. Did you talk with anybody from RKO?
A. Yes, I did, sir.
Q. Who did you talk to there?
A. Ray Nolan was salesman at that time.
Mr. Seeley: What is the name?
The Witness: Ray Nolan.
Mr. Seeley: Nolan. Thank you.
Mr. McConnell: Q. Where did you have that talk?
A. I think most of that was at RKO's office and at the Allied Theatres office, and I talked about the product and tried to better my playing position, and the same argument was given to me that my playing position was the

same as it always had been, that he could not change it and I could not buy in any other playing position but what I was in.

Q. Now, prior to these talks, did you have any authorization from the owners of this theatre to bid more money for a prior run?

A. The owners of the theatre had told me to go out and try to do more business.

Mr. Seeley: Just a minute. I object to the conversation.

The Witness: Yes.

Mr. Seeley: I move the conversation be stricken, as far as he went with it.

The Court: The conversation may go out. The
195 answer "yes" may stand.

Mr. Seeley: All right.

Mr. McConnell: Q. Now, did you also have similar negotiations with other distributors who are not parties to this case?

A. Yes, sir.

Q. And, briefly, what was the nature of those negotiations?

A. I always had asked them for a better playing position; they all gave me the same answer, that I was established as a first week theatre and they could not change me, that that is the way they had sold previous runs ahead of me.

Mr. Adcock: I move to strike that answer.

The Court: On what ground?

Mr. Adcock: It is so general,—whether it relates to this 1937 season or not.

The Court: I take it it refers to 1937.

Mr. McConnell: I have not gone beyond the 1937 season yet.

Mr. Adcock: Then I move to strike because of the statement "I always talked with so-and-so." He does not purport to give the conversation he had with them.

The Court: Do you want him to give the name of each one of those independents that he talked to?

Mr. Adcock: Yes.

196 The Court: All right. We will take a recess for ten minutes.

(A recess was had, after which the proceedings were resumed as follows:)

Mr. McConnell: Q. Mr. Salkin, will you name the dis-

tributors of motion picture films other than the defendants in this case?

A. United Artists, Columbia, Universal, Monogram, Republic, E. D. C.

Q. Now, did you try to obtain an earlier playing position from those companies after 1938?

A. Yes, sir.

Q. Were you successful at any time?

A. No, sir.

Q. Do you know why they were not named as defendants to this suit?

Mr. Seeley: I object to that.

The Court: How is that material?

Mr. McConnell: Well, the only materiality it has, in the opening statements here it was said that he would have joined these other parties—

Mr. O'Brien: No, that was not said.

Mr. Seeley: The fact is they were not joined. That is the only statement I recall.

Mr. O'Brien: The statement about those other dis- 197 tributors was that they did not hold theatres here and yet they gave the same protection, whereas the charge is that the protection was given to protect Affiliated Exhibitors.

The Court: I don't see how that is material.

Mr. McConnell: I would like to make an offer of proof on that, if the Court please.

The Court: As to why they were not joined?

Mr. McConnell: Yes. I think I should not do that, it would be improper to do it in front of the jury.

Mr. Seeley: If you wish, we can agree with you that you do it after the jury is excused.

The Court: Do you want to do it now?

Mr. McConnell: I would just as soon do it later on.

The Court: All right.

Mr. McConnell: Q. Now you stated, Mr. Salkin, these negotiations were conducted in the year 1937 during the buying season?

A. That is right.

Q. Will you tell the Court and jury what the buying season is? What do you mean by the buying season?

A. The buying season is when we buy the product for the next year to exhibit in our theatres, which generally start buying releases in about October of the year that

we buy in, we buy a whole year's product, and that 198 was the buying season. Then we would have enough product or enough pictures to do us for the full year, which sometimes starts in July or June, as soon as the distributing companies announced their policy and their plans for their following year's product, and that is generally what was known as a buying season of product. We bought the product to be run starting in the fall of the year that we were buying in until the following—most contracts expired in September the following year. Some times they would release pictures after the date, but most of them were to expire in the following September.

Q. Now, how long did that system of buying for a year prevail?

A. Up until the consent decree was handed down in 1940.

Q. And what has been the method of buying pictures since that time?

A. With all consenting companies we buy in groups of all pictures that have been trade shown in groups of five we are supposed to sometimes we are buying in three groups of fifteen, but we don't buy a whole year's 199 output, we buy only pictures that have been trade shown.

Q. Now, going back to your negotiations in 1937, did you make any attempt to negotiate for a prior playing position outside the buying field?

A. Well, at all times I was in contact with salesmen for all companies, and at a lot of different times I made attemtps to buy product before the policies of the selling season opened up, and I never was successful. What I mean by that is before the companies announce their policy we started still in June or July, a lot of times in February, March or April I tried to buy the following year's product and at different playing position, figuring that the deals had not been made with the bigger—with the opposition theatres, but I never was successful.

Mr. O'Brien: I object to that and move to strike it. It is too general. You cannot tell who he is talking about and we have no way of checking—

The Court: I think from that standpoint the objection is good. I don't know why you let such a long answer go in without making objection.

Mr. O'Brien: The question was all right, your Honor.

The Court: The objection is sustained. The motion
200 to strike is allowed. Let us find with whom he was dealing, where he was and when.

Mr. McConnell: All right. Let us read the question to the witness.

(Question read as follows:

"Now, going back to your negotiations in 1937, did you make any attempt to negotiate for a prior playing position outside the buying season?")

The Court: The answer to that is Yes or No.

The Witness: Yes.

The Court: All right. Now let us have the next question.

Mr. McConnell: Q. Now, with whom?

The Witness: A. In the year of 1937 I attempted with Mr. Smith of Paramount.

Q. All right, and in what way? Was there a conversation between you and Mr. Smith of Paramount?

A. Yes, sir.

Q. Where was that?

A. A lot of times the conversation was in the theatre, when Mr. Smith would call on me, and some of the times in the Paramount office.

Q. Now, what was said—let us fix a time now for
201 conversation and let us have what was said.

A. Mr. Smith told me he could not sell me the product before the buying season, as they had not sold the circuit first, and he could not negotiate deals with me before the buying season until they had sold the circuits ahead of me, and that was in February, March and April of '37.

Q. Now did you talk to anybody from the other distributors on that subject matter?

A. Yes, I talked to other salesmen. I talked to Mr. Loeb. I talked to Mr. Loeb of Twentieth Century-Fox. I talked to Mr. Mendelson of Metro-Goldwyn-Mayer.

Q. Which Mr. Mendelson?

A. Teddy Mendelson, who was a salesman.

Q. All right. Who else did you talk to?

A. I talked to Mr. Phillips of Columbia Pictures. I talked to Mr. Gottschaw of Universal Pictures. I talked to Ray Nolan of RKO.

Q. Have you named representatives of all the defendants in this case now? Did you talk to anyone from Vitagraph?

A. Yes, but I cannot recall who the salesman was at that time with Vitagraph.

Q. Well, now, in those talks, what was your conversation?

202 A. The conversation was to better my playing position, to try to move the playing position of the Jackson Park Theatre up in an earlier playing position.

Q. And in these conversations which took place, I take it, as you say, prior to the buying season, what did these distributors tell you?

A. They could not sell me ahead of the buying season, they had to wait until they made their deals with the circuits before they would negotiate and deal with me.

Q. Did all the distributors tell you that?

A. Yes, sir.

Mr. O'Brien: I object to that last question and move it be stricken.

The Court: Sustained.

Mr. McConnell: Q. Well, what distributors told you that?

The Witness: A. Paramount, Fox, Metro, Columbia, Universal, RKO, Warner Brothers.

Mr. O'Brien: I object to that and move that it be stricken as a pure conclusion,—not distributors. Let him state who he talked to and he said when, I take it he talked with them in 1937.

The Court: I think he gave the names of the representatives.

203 Mr. McConnell: He gave the names of all the people who he talked to.

Mr. O'Brien: No; he did not.

The Court: Except he said he could not remember the names of the man with Warner Brothers.

Mr. O'Brien: That is right.

The Court: As far as Warner Brothers is concerned the answer goes out.

Mr. McConnell: Q. Was Mr. Mager present with you at any of these conversations?

The Witness: A. Yes, sir.

Q. Which one?

A. I cannot recall actually which ones; that I know he had been in on a lot of them with me at different times.

Q. Now, in 1936, at the time that the plaintiffs in this case acquired the theatre, were the Balaban & Katz theatres

and the Warner Brothers Theatres playing double features?

A. Balaban & Katz had started double features in 1936, in November. Warner Bros. started at a later date.

Q. Now, the plaintiffs acquired this theatre on October 28, 1936?

A. Right.

204 Q. At that time was Balaban & Katz playing double features?

A. No, sir.

Q. Was Warner Bros. theatres playing double features?

A. No, sir.

Q. Was the Jackson Park Theatre playing double features?

A. No, sir.

Q. Now when did Balaban & Katz institute double features in its theatres on the south side?

A. In November, 1936.

Q. And Warner Bros.?

A. Warner Bros. started later. Warner Bros. started in about January of 1937.

Q. Now, did the double features have some effect upon the pictures that you were able to get for the Jackson Park Theatre?

A. It gave me less clearance.

Mr. McConnell: Just answer yes or no to that.

The Witness: Yes.

Mr. McConnell: Q. And what effect did that have?

A. It absorbed more product than it absorbed before. It gave me less clear pictures in the Jackson Park

205 Theatre than I had had previously.

Q. What do you mean by a "clear" picture? Explain that.

A. Well, a clear picture is one that the theatres around me had not played, one that not as many people had seen, and when they started double features they were using just twice as many pictures to when they were using single pictures.

Q. And does a clear picture have greater or less box office attraction?

Mr. O'Brien: Now, your Honor, I want to note our objection to this line of examination. It appears from what has already been said that by this time everybody was double featuring and it does not appear that the Jackson

Park, any more than anyone else, had a right under its contracts to buy clear pictures. Its contracts show a right to buy pictures, and the pictures which were licensed to it to run in its theatre after their runs in prior theatres and, should there be occasions when pictures were not played in the prior theatres, then to run it in their playing position when it came along. But that was not a matter of right,
it was a mere matter of happenstance, if a prior house
206 did not choose for some reason, to play. It was not a
right which they had under their contract, and I object to it for that reason.

The Court: The objection is overruled.

Mr. McConnell: Read the question to the witness, please.

(Question read as follows: "And does a clear picture have greater or less box office attraction?")

The Witness: Yes.

The Court: Yes what?

The Witness: It has more box office value as a clear picture.

Mr. McConnell: Q. And will you explain to the Court and jury why that is so?

A. Because not as many theatres has run the picture ahead of them. The picture is new to the territory when I run it first run.

Q. And not as many people have seen it?

A. Have seen it.

Q. How many pictures were you buying for the Jackson Park Theatre when it was operating under a system of single release, that is, how many pictures during the
year?
207 A. About 175 pictures a year.

Q. And how many changes of program were you running?

A. About an average of three and a half changes a week. Some weeks I would run three and some weeks four.

Q. But, after the institution of double features in the Jackson Park, how much product, how many pictures?

A. About 300.

Q. How many changes of program a week did the Tower Theatre have?

A. The Tower Theatre? Well, most of the time they made two changes. There is weeks they made one change,—very few.

Q. How many changes did they make a week under single features?

A. The same thing. Sometimes they would run the product a solid week and sometimes they would make two changes in a week.

Q. How many changes a week did the Jeffery make?

A. Two.

Q. And the Maryland?

A. Two.

Q. And the Tivoli?

A. One.

Q. And the Avalon?

A. One.

208 Q. Did the Jeffery and the Maryland use as much product as you did at that time?

A. No sir. No sir; the Maryland and Jeffery with two pictures a week would use 104; me, with 3½ changes a week, would use about 175 pictures.

Q. Now, after 19—during 1937 you testified you had these negotiations with the companies, the distributors. Did you advise the owners of this property that you were trying to obtain a better playing position for the Jackson Park?

Mr. Seeley: I object to that.

The Court: What is the objection?

Mr. Seeley: Calling for a conversation between this man and the plaintiffs.

The Court: You objected when they were on the stand that they could not give the conversation with him.

Mr. O'Brien: If the conversation was with us, your Honor.

Mr. Seeley: The same conversation.

Mr. O'Brien: He is not asking about conversations which this man had with us. Any which he had he can answer to.

The Court: Well, I don't think it is binding on these defendants, the conversation he had with his principal.

209 Mr. McConnell: I have a right to trace his authority. Either the principal or agent can testify.

The Court: Well, there is no dispute about his authority.

Mr. O'Brien: No dispute.

The Court: I don't understand there is any dispute but what this man was the fully authorized agent of the plaintiffs here.

Mr. McConnell: I am simply trying to show his knowledge got back to his principals that he was negotiating for.

The Court: I think objection may be made that that is conversation had outside their presence. There is no dispute about his authority to act as their agent in all things in connection with the operation of this theatre.

Mr. McConnell: All right.

Q. Subsequent now to 1937 did you continue negotiations with the distributors for a better playing position for the Jackson Park Theatre?

A. Yes, sir.

Q. And going now to 1938, when were your first conversations held on that subject matter?

210 A. Oh, I would start in about April, May, and into June and July.

Q. Now, was anyone present with you when you had these conversations?

A. Some of the times Mr. Mager was with me on some of these conversations, yes, sir.

Q. And in your conversations prior to the buying season, were those conversations substantially the same as the ones you have already related?

A. Yes, sir.

Q. And with the same defendant distributors?

A. That is right, sir.

Q. And in your conversations in the buying season were they substantially the same as the ones you have narrated in the 1937 season?

A. Right, sir.

Q. And with the same companies?

A. Yes, sir.

Q. With the same salesmen?

A. No, some of the salesmen had changed.

Q. All right. Now what were the differences? What salesmen were changed?

A. Ted Mendelson had left Metro and had gone to Warners.

211 Q. Any other changes in the salesmen?

A. Universal, Mr. Gottschaw had left and Mr. Meyers had come in.

Q. Were there any changes in the salesmen of the defendants in this case?

A. RKO, Mr. Nolan had left and Joe Cozzi had come in.

Q. Is that all the changes?

A. Mr. Julian King into Metro.

Q. Now, did you have conversations with these new salesmen?

A. Yes, sir.

Q. And where?

A. At the theatre, at their offices, or at Mr. Mager's office.

Q. Well, let us take the conversation with Mr. Cozzi—was that his name?

A. Yes sir.

Q. Who did he represent?

A. RKO.

Q. All right, what conversation did you have with Mr. Cozzi?

212 A. A conversation in reference to buying their pictures, with reference to seeing about a change in our playing position.

Q. What was said?

A. I said I thought I could do more business by moving up my playing position, changing my playing position and getting a better playing position than I had. Mr. Cozzi told me that could not be done, that I was a first week theatre, that that was where they had me, and he was not in position to change my playing position, the Jackson Park Theatre.

Q. Well, had you talked to anybody of that company prior to that buying season, or did they tell you why they could not change your playing position?

A. At the time of the buying season?

Q. Yes.

A. Yes; because they had sold the circuits and could not change my playing position; that the circuits were sold prior to the meeting.

Q. Did you try to buy from anybody of that company prior to the buying season?

A. Yes. They would not sell me ahead of the circuits, and would only sell me, after the circuits had been 213 sold, in the first week of release.

Q. Well now, the playing positions for theatres are contracted for a season, are they not?

A. The playing positions for theatres?

Q. Yes.

A. They are supposed to be.

Q. The contracts only run from year to year, don't they?

A. That is the contract. They never gave me opportunity to change my playing position, while it is supposed—

Mr. Seeley: I move that all this witness's statement as to what "is supposed to be", be stricken.

The Court: Yes. That may go out.

Mr. McConnell: That may go out. Read the question to the witness, please.

(Last question read by reporter.)

The Witness: A. Yes, sir.

Mr. McConnell: Q. So that at the end of any contract period, none of your competition operating on a one-year contract had any clearance over Jackson Park Theatre?

Mr. Seeley: I object to that as leading, argumentative and suppositious.

The Court: Sustained.

Mr. McConnell: Q. What would be the situation
214 after the conclusion of the contract, the yearly contract of your competing theatres, so far as clearance over Jackson Park Theatre?

Mr. Seeley: I object to that. This witness has not shown any knowledge of clearance of contracts which competing theatres have with anybody.

The Court: He may answer that. That objection is overruled.

Mr. McConnell: Read the question to the witness, please.

(Last question read by reporter.)

The Court: Do you understand the question?

The Witness: A. I don't understand it, sir.

The Court: He don't understand the question. Put another question.

Mr. McConnell: Q. Do you know whether or not any theatre has a vested right to a playing position aside from these yearly contracts we have been talking about?

Mr. Seeley: That is objected to as a conclusion.

The Court: Objection sustained.

Mr. McConnell: Q. Do you know whether or not the Balaban & Katz Theatres negotiate their clearance year by year from the different distributors?

The Court: Do you understand that?

215 The Witness: A. Yes, I do. I have never seen them change any of my clearance. They generally send out a letter of protection—

Mr. O'Brien: I move that be stricken.

Mr. Adcock: I move to strike it.

The Court: That is not responsive.

Mr. McConnell: Read the question to the witness, please.

(Last question read by reporter.)

The Witness: A. Yes.

Mr. McConnell: Q. The answer is yes?

The Court: The answer is yes.

Mr. McConnell: Q. Now, at the conclusion of that clearance stipulated in those yearly contracts, do they have any clearance over the Jackson Park?

Mr. O'Brien: I object to that. It is calling for a conclusion about something this man is not shown to have any knowledge of.

Mr. McConnell: He says he does.

Mr. O'Brien: These are written contracts, are they not? The contracts themselves will tell all about it.

The Court: I take it, they are all written, are they not?

Mr. O'Brien: Sure.

216 The Court: I suppose the contracts themselves will have that. Objection sustained.

Mr. McConnell: Q. Do you know whether Balaban & Katz and Warner Bros. Theatres chain negotiated clearance over Jackson Park prior to the termination of their yearly contract?

The Witness: A. When they were working on their new deal and were negotiating their deal, I imagine they worked out the clearance.

Mr. O'Brien: I move that be stricken.

The Court: That goes out. Do you know?

Mr. McConnell: Q. Do you know whether they did?

The Court: Say yes or no. Then he will ask you another question.

The Witness: A. Yes, they did.

Mr. O'Brien: I move to strike that answer. He asked the witness whether he knew whether they negotiated or not.

The Court: And he said he did.

Mr. O'Brien: He said, "they" did. He is answering, and we don't have a chance to object.

The Court: Suppose you put another question and get an answer on it.

Mr. McConnell: Q. Do you know whether or not Balaban & Katz and Warner Bros. Theatres negotiate for
217 their product ahead of the Jackson Park?

A. Yes, they negotiate—

Mr. O'Brien: Now, just a minute.

The Court: The answer is yes.

Mr. McConnell: Q. When do they negotiate, if you know, for their contract?

Mr. O'Brien: I noted my objection. The agreements are in writing and are the best evidence, and not the witness's recollection.

The Court: The objection to that is sustained, but he may answer this question. When did they negotiate? Is that not the question?

Mr. McConnell: That is the question.

The Witness: A. When they negotiate for first run theatres.

Mr. McConnell: Q. When was that in time as compared with the time when you could negotiate with the distributors?

Mr. Adcock: I object to that.

The Court: The objection is overruled.

Mr. McConnell: Read the question to the witness, please.

(Last question read by reporter.)

The Witness: A. Balaban & Katz plays a picture ten weeks ahead of me before they finish, so it must be
218 fifteen or twenty weeks ahead of me for Balaban & Katz before I can even play the picture.

Mr. Adcock: I move the answer be stricken.

The Court: The answer may be stricken. Listen to the question, Mr. Witness.

Mr. McConnell: Read the question to the witness, please.

(Last question read by reporter.)

Mr. McConnell: Q. I am referring now to the negotiation of Balaban & Katz and Warner Bros. chain with the distributors. When was that negotiated in time, in reference to the time those same distributors would negotiate with the Jackson Park?

A. I don't know when they would start working on deals with Balaban & Katz or Warner Bros.

Q. Was it prior or after? Do you know whether it was prior to or subsequent?

A. It is prior to.

Q. But you don't know the exact date?

A. No, I don't know the date, but it was prior to it, because—

The Court: Never mind the "because." You have answered. Let's have another question.

Mr. McConnell: Q. Now, were you able to negotiate for a prior run for Jackson Park with any of the de-
219 fendants in this case?

A. No, sir.

Mr. Adcock: Wait. I move to strike that. I object to the question and ask to have it stricken.

Mr. McConnell: I have not finished the question.

The Court: He had not finished the question before you made the answer. Better wait until he finishes the question, Mr. Witness.

Mr. McConnell: Q. Were you able to negotiate with any of the defendants in this case for a prior run for Jackson Park Theatre?

Mr. Adcock: I object to that.

The Court: He has not finished. He is only half way through. Now he will have to start all over again.

Mr. Adcock: The witness was getting ready to answer.

Mr. McConnell: Read as far as I got, please.

(Question read by reporter.)

Mr. McConnell: Q. (Contining.) —prior to the time that Balaban & Katz and Warner Bros. had completed their negotiation with the distributors?

A. No, sir.

Q. Now, is that true for all of the years from 1936,
220 the time the plaintiffs acquired this theatre, up to the time of this lawsuit?

A. No, sir, it isn't. There was two or three instances where they did not get together with them circuits. They offered me the protection. 20th Century Fox offered—

Q. Let us fix the time.

A. In 1939, "How Green Is My Valley."

Q. In 1939, you had negotiations with somebody?

A. With 20th Century Fox.

Q. Whom did you talk to?

A. Mr. Eckhardt and Mr. Loeb.

Q. Mr. Clyde Eckhardt?

A. Yes.

Q. And who else?

A. Mr. Mager and Mr. Loeb and myself.

Q. Where was the conversation?

A. Mr. Eckhardt's office.

Q. What was said?

A. That they had not sold Warner Bros. the picture

and would sell to me and see if we could release it. I bought it and played it and—

Q. Now, you said there was some other occasion?

A. Paramount in 1940, "Reap The Wild Winds."

Q. Who talked with them about that?

A. Mr. Wirthwein.

221 Q. Who was present?

A. Mr. Mager, Mr. Wirthwein, and myself.

Q. And what was said?

A. They had not sold Warner Bros. picture and would sell it to me in C week release for Jackson Park.

Q. Jackson Park bought it?

A. Yes.

Q. And played it?

A. Yes.

Q. In C week?

A. Yes.

Q. And paid rent for the C week?

A. That is right.

Q. Aside from those two occasions, you never were able to negotiate prior to the time, that Balaban & Katz and Warner Bros. Theatres bought the pictures, is that correct?

A. That is right, sir.

Q. Now, did you have conversations in the succeeding years, in 1939, in 1940, and 1941, along that same subject matter, trying to obtain a better run for Jackson Park Theatre?

A. Yes. In 1939, we did; and in 1940 we were buying continuously at all times, and it was always in that conversation.

Q. Each time you bought a block of pictures?

A. Pictures, that is right, sir.

222 Q. That was with the different salesmen?

A. Right, sir.

Q. Of the different defendants in the case?

A. Yes, sir.

Mr. O'Brien: That is too leading. I object. He cannot state—

The Court: On the ground of being leading, I will sustain the objection. If he is giving different conversations, he must give the names of the persons, and the time and place.

Mr. McConnell: All right.

Q. Going down to 1939, did you have conversations in

1939? Whom did you have conversations with in Vitagraph?

Mr. O'Brien: I object to that, until he says that he did.

Mr. McConnell: He said he did, in all those years.

The Court: He mentioned them collectively, and you objected. I assume he must have had conversations. Now he is asking for the conversation in regard to Vitagraph. Overruled.

The Witness: A. I bought their pictures in 1939.

Mr. McConnell: Q. Whom did you have conversa-
223 tions with from Vitagraph in 1939?

A. Mr. Sid Rose. He was the salesman there at that time.

Q. When did you first start talking about the subject matter?

A. In June, 1939.

Q. Was anybody with you?

A. Mr. Mager and myself.

Q. Where was the conversation?

A. Mr. Mager's office, Allied Theatre.

Q. What was said on the subject matter of a better playing position for Jackson Park?

A. We asked for a better playing position, and were told we could not be changed; that the circuits were sold ahead of us and were holding protection on us.

Q. Did you have that conversation at any other time with anybody from Vitagraph Company?

A. At that time, no sir.

Q. In 1939?

A. No, sir.

Q. What conversation did you have in the buying season of 1939 with Warner Bros. or Vitagraph, and who with?

A. Mr. Sid Rose.

224 Q. Where?

A. At the Allied Theatre office.

Q. What was that conversation?

A. That was for the position they had us in the first week. It was just a matter of specifying the price and getting together on our deal.

Q. Was anything said about Jackson Park getting a better playing position?

A. We had talked to him prior to that about a better playing position. He said he could not change it. When we went in the buying season, he told us the circuits had

been sold ahead of us; and that that was the position we were in, and he could not charge it.

Q. Whom did you have that conversation with?

A. Joe Cozzi, in 1939.

Q. Where?

A. Allied office.

Q. Who was there?

A. Joe Cozzi, Mr. Mager, and myself.

Q. What was the subject of that conversation?

A. I was trying to change our playing position. He told us we could not be changed, that the circuits had been sold, and the only position we could play in was the first week of release.

Q. Now, whom did you have conversations with 225 from Loew's?

A. Mr. Julian King.

Q. Where?

A. The Allied office, in his office.

Q. Who were present?

A. Mr. Mager and Mr. King.

Q. What was the substance of that conversation?

A. That he could not change our playing position. The only position he could sell me was the first week of release. That was the only thing he could do.

Q. Did he tell you why?

A. Yes; account of the circuits being sold with protection on us.

Q. Who did you talk with for Paramount?

A. Mr. Wirthwein.

Q. Where?

A. At his office, and Allied office, with Mr. Mager.

Q. What was the substance of that conversation?

A. That he could not change my playing position. The only position he could sell me in was first week, account of the circuits being sold ahead of me.

Q. Did you have similar conversations with different salesmen along '40 and '41?

A. Yes, sir.

226 Q. That is, 1940 and 1941?

A. Yes, sir.

Q. Who were the salesmen you talked to for the different companies in these years? 1940, first.

A. 1940, Mr. Loeb of Fox; Mr. King of Metro; Mr. Wirthwein of Paramount; and Mr. Phillips of Columbia.

Q. Who was the Vitagraph man?
A. Sid Rose for Vitagraph.
Q. Is that all you remember?
A. Who did I miss?
Q. 20th Century Fox?
A. Yes, sir, Mr. Loeb.
Q. Paramount?
A. Mr. Wirthwein.
Q. Loew's?
A. Mr. King.
Q. And RKO?
A. Mr. Cozzi.
Q. Now, in 1941, did you have similar conversations?
A. Yes, sir.
Q. With those same salesmen or different ones?
A. No, they were all there at that time.
Q. Was anybody present at those conversations?
A. Mr. Mager, at some of them.
Q. Were the conversations in substance as you already testified to for the previous years?
A. Yes, sir.
Q. Now, calling your attention to a conversation with Mr. James Coston in 1941, with reference to the 227 Hamilton Theatre, do you recall such a conversation?
A. Yes.
Q. Do you remember about when it was?
A. Yes, sir, about 1941. The original conversation was with Mr. Halperin, and then Mr. Coston came into the picture.
Q. Let's have the time you first talked to Mr. Halperin.
A. Mr. Halperin had asked me—
Q. Let's get the time. If you can't give the exact date, give approximately.
A. About December of 1940. Mr. Halperin had asked me—
Q. Where was the conversation?
A. Mr. Halperin's office, in the Warner Bros. office.
Q. Who was there?
A. Mr. Halperin and I.
Q. No one else?
A. No, sir.
Q. What was said?
A. Mr. Halperin asked me if I would permit him to move his Hamilton Theatre into first week of release. I

told Mr. Halperin, as long as he wanted to move up, I would like to move Jackson Park up in C week release. He told me he would talk to Mr. Coston, who was his own
228 manager from Warner Bros., and see what they could do about moving Jackson Park up. That was something I had tried to do for quite a while, but never was successful.

Mr. Adcock: I move to strike—

Mr. McConnell: I move to strike that on my own motion.

The Court: Yes. The latter part goes out.

Mr. McConnell: Q. Just the conversation, Mr. Salkin.

The Witness: A. I told him I would think about it. He said he would talk to Mr. Coston and at a later date in a few weeks, I think it was in February, 1941, I went up and seen Mr. Halperin and Mr. Coston and told them I would leave them move the Hamilton Theatre up in C week, if they would see what they could do to move Hamilton in first week and move Jackson Park in C week.

Mr. Coston said he would like to move Hamilton in first week, Jeffery in B week, and Jackson Park in C week. I said O. K. I talked to Mr. Halperin and Mr. Coston a number of times after that.

Q. Wait. Have you finished all the conversation at that meeting?

229 A. Yes, sir.

Q. Who was Mr. Halperin?

A. Mr. Halperin was the booker and buyer for Warner Bros. Theatres.

Q. Who was Mr. Coston?

A. Mr. Coston was his own manager for Warner Bros. Theatres.

Q. After that, did you have any further conversation with either of those gentlemen with reference to those subject matters?

A. Yes.

Q. Where?

A. Mr. Mager and I had gone up to see Mr. Halperin a number of times after that, and went up to see them twice after that about moving Jackson Park up. He told us he was still trying to get it done through the exchanges. Mr. Kirsch, the head of Allied, went up one time to see Mr. Coston in reference to the same thing.

Mr. Adcock: I move to strike that portion about Mr. Kirsch, unless the witness knows.

The Court: Unless this is something done in his presence, the motion will be allowed.

Q. Were you present when this gentleman went up?

The Witness: A. Yes, he went out with me to see
230 him.

Mr. McConnell: Q. What was said?

A. Mr. Coston told him Balaban & Katz would not allow Jackson Park to move up; would not allow Jeffery to move up; and that was all that could be done. Jackson Park would have to stay in playing position for first week. It was after a year—

Q. Wait. Was that the end of the conversation?

A. Yes, sir.

The Court: This would be a good time to adjourn until tomorrow morning. We will recess until 10:30 tomorrow morning.

You have that offer you want to make?

Mr. McConnell: Yes.

231 (Whereupon the following proceedings were had outside the presence of the jury:)

Mr. McConnell: I asked the witness a question. I want the witness's answer as an offer of proof. By this witness, he would testify in answer to the question, why were not the other distributors named as defendants; that this witness would answer that the other defendants were not named as defendants simply because they felt, the owners felt and we felt that enough defendants had been joined; and because they felt, since the ownership of theatres could not be shown in the proof, the case was stronger against the defendants named.

Mr. Seeley: To which offer, the defendants and each of them object.

The Court: That is more a testimonial of your ability as a lawyer than anything else.

Mr. McConnell: The only purpose is, there is argument apt to be made, that we should have joined other defendants.

The Court: You have enough defendants, in your opinion, that are in control in these communities, and that you think they ought to respond.

232 Mr. McConnell: That is right.

The Court: I don't see any reason for this testimony.

Mr. O'Brien: For the record, I want to state in this

connection, we do not contend they should have joined anybody else as defendants.

The Court: You make the offer, they object, and the objection is sustained.

Mr. O'Brien: I object to your Honor for that reason. I have no other reason. It was never contended by anybody that they should join other defendants. The offer is made to meet that supposed contention.

The Court: We will sustain it on both grounds.

(Whereupon the trial of the above entitled case was continued to Wednesday, February 16, 1944, at the hour of 10:30 o'clock a. m.)

233 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Florence B. Bigelow, *et al.*,
vs.
RKO Radio Pictures, Inc., *et al.*

Before Igoe, J. and J., Wednesday, February 16th, 1944, 10:30 o'clock A. M.

Court met pursuant to adjournment.

Present:

Mr. McConnell,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

The Court: Are you ready to proceed, Mr. McConnell?
Mr. McConnell: Yes, your Honor.

234 RICHARD SALKIN, a witness on behalf of the plaintiffs, having been previously sworn, was examined further and testified as follows:

Direct Examination (Cont'd) by Mr. McConnell.

Q. Mr. Salkin, I overlooked asking you at the start of your testimony, are you married?

A. Yes, sir.

Q. Have any family?

A. Two. Two boys, one 3 and one 14.

Q. Now, in your testimony yesterday you stated that you could not remember the name of the Vitagraph salesman that you talked to in 1936 and '37. Do you recall the name?

A. Yes, sir.

Q. Who was it that you talked to from Vitagraph?

A. Mr. Charlie Lundgren, in the years 1936 and '37. Mr. Sid. Rose for the year of 1937 and '38, and '38 and '39; the year of 1939 and '40 Mr. Teddy Mendelson, and for the year of 1940 and '41 Mr. Harry Goldman.

Mr. O'Brien: If the Court please, I suppose, without the need for repeating the objections, so as not to interrupt, we might have a blanket objection that testimony as to conversations between defendant and the wit-
235 ness, or anyone else, is not binding upon the other defendants until there is a prima facie case established.

The Court: That may be understood. Conversation he has had with any single defendant is only binding upon that defendant unless and until there is a connection made between all defendants.

Mr. O'Brien: Yes.

Mr. McConnell: Q. Have you named them all now?

A. Yes.

Q. And did you have the same conversations with those salesmen that you had with the other salesmen that you narrated yesterday?

A. Yes, sir.

Q. About the playing position?

A. Yes.

Q. Of the Jackson Park?

A. Yes, sir.

Q. Now, did you have a conversation with a Mr. Clyde Eckhardt some time along in 1941?

A. I did, sir.

Q. With reference to the Jackson Park?

A. Yes, sir.

Q. Is Mr. Eckhardt here today?

A. Yes, sir.

236 Q. And where was that conversation, and who was there?

A. Mr. Eckhardt's office, and Mr. Mager and myself were there.

Q. And what was said?

A. I asked Mr. Eckhardt why I couldn't be moved up in the position of C week, being that I had played one of his pictures, previous to our conversation, in C week; and he told me that I could not play in C week of release on account of the previous run being sold with protection on it.

Q. You have spoken of "protection" on you or on the Jackson Park Theatre. How long does protection run?

A. The life of each individual contract.

Q. And expires with the contract?

A. With the contract, yes, sir.

Q. Now, can you state for us and for the Court and the jury the clearance or release set up of the motion picture industry here in the Chicago Exchange District, starting with the Loop runs?

A. The Loop runs are for any period of time that they see fit to run them in the Loop. After they finish their run in the Loop there is three weeks lapse of no runs, and they go into what is known as first week theatres, A, A week of release.

Q. How many weeks are there in A week of release?

237 A. Three weeks, sir, first, second and third A week. They next go into what is known as B weeks, which has a first and second B week.

Q. And after that?

A. They go into the C week, which is one week.

Q. And after that?

A. Into the first week of general release.

Q. All right. Now, how many weeks back of the conclusion of the Loop run is the first week of general release?

A. Tenth week.

Q. And that is the place where the Jackson Park Theatre now plays, is that correct?

A. That is right, yes, sir.

Q. Now, will you describe for us the Jackson Park Theatre?

A. The Jackson Park Theatre is a theatre of 1458 seats, with all seats on the main floor.

It is a modern, up-to-date theatre, with an organization of help that has been trained to handle the public, to give the public service.

The projection is the latest type of Western Electric sound. The equipment for showing the motion pictures is all new, and installed in 1935, of the latest type
238 of projection and sound it was possible to get at that time.

The physical condition of the Theatre is very good. We have never had any complaints from any insurance companies or anybody about the physical condition or the hazardous condition of the Theatre.

Q. Well, can you describe the Theatre with reference to the rest of the property; is the Theatre building a separate building?

A. The Theatre auditorium is a separate building. The lobby is part of the Theatre building, just the lobby part; the Theatre auditorium is an individual fireproof building, divided by a fire-brick wall from the rest of the front of the building.

Q. What is the size of the screen for your pictures as compared with a Loop theatre, for instance?

A. The screen is about one of the biggest screens in Chicago. It is as big as the Chicago Theatre, which is an 18 by 26 foot screen, which is an awful large screen for that type of theatre.

Q. What kind of seats do you have?

A. We have upholstered, spring cushion seats.

Q. How are they covered?

A. Leather. They are in very good shape.

239 Q. Now, when was that Theatre, or was the Theatre remodeled at any time while you were managing it?

A. The Theatre was remodeled in 1935.

Q. What was the nature of the remodeling that was done at that time?

A. A complete remodeling of the complete Theatre. There was walls added into the auditorium, to separate the auditorium from the foyer and lobby. There was new type modern washrooms put in, and for which we absorbed

part of one of the stores next door. There was a complete new front put on. The canopy was all done over. The Theatre was re-rugged. A washed air cooling system was put in. New rugs were put in. A new screen was put in. All new projection machines and equipment were installed; and the interior of the Theatre was all done over.

Q. Was anything done to the outside of the building?

A. Yes, sir. There was a complete new front put on the front of the Theatre. The location of the box office was changed. A new modern type box office was put in. The lobby and foyer—the lobby in the front was all rebuilt, including all the old floors, all the old tile was all replaced with rug and terrazzo. The walls were all covered and rebuilt.

240 Q. And that was done just prior to the time these plaintiffs acquired the Theatre, is that correct?

A. In '35, sir.

Q. And has the building been kept in that condition?

A. Yes, sir.

Q. During the time of their ownership?

A. Yes, sir.

Mr. McConnell: I am going to ask that these documents be marked for identification, Plaintiffs' Exhibits 4, 5, 6 and 7.

(Said documents were thereupon marked Plaintiffs' Exhibits 4, 5, 6 and 7 for identification.)

Q. Now, Mr. Salkin, I show you documents which are marked for identification Plaintiffs' Exhibits 4, 5, 6 and 7, respectively, and ask you to examine those documents, and state whether or not you were present when those photographs were taken?

A. Yes, sir. These photographs were taken last Thursday morning.

Q. In your presence?

A. Yes, sir. I was there during the taking of these photographs.

Q. Can you state whether or not they truly represent what they purport to set forth?

241 A. Yes, sir. The same as the Theatre is, that is the same as these photographs are.

Mr. McConnell: I offer in evidence the documents marked Plaintiffs' Exhibit 4 to 7, inclusive, for identification.

The Court: They may be admitted.

(Said documents so offered were received in evidence as PLAINTIFFS' EXHIBITS 4, 5, 6 and 7, and are as follows:)

242 Mr. McConnell: I would like the jury to look at these now, if the Court please, so they will know what we are talking about here.

The Court: All right. You may pass them around.

Mr. O'Brien: I wonder, although it might be out of order, and so the jury can follow both the direct and cross, and I think Mr. McConnell will not be opposed to the technical proof on the taking of the photographs, I mean, to put the pictures of the different theatres in at this time.

The Court: No. I think I will let him put in his case first, and then see what his proof is.

Mr. McConnell: Q. Now, Mr. Salkin, will you describe for us the nature of the neighborhood in which the Jackson Park Theatre is located?

A. The Jackson Park Theatre is located at the intersection of 67th and Stony Island Avenue. Northwest—east of the Jackson Park is Jackson Park.

Northwest of the Jackson Park is a heavily populated section of practically all flats, apartments and hotels.

Mr. McConnell: Speak up just a little bit louder.

The Witness: Yes.

243 Southwest of 67th and Stony Island Avenue, for three and one-half blocks, there is a solid section of apartment buildings and hotels, and to the I. C. tracks, which, west of there, is the Oakwoods Cemetery. Southeast of the Jackson Park Theatre, for a matter of about up four blocks, it is heavily populated with apartment buildings. East of the four blocks is a section known as the Highlands, where there is a lot of homes. East of the Highlands, up east of Jeffery Avenue, you come back where there is homes and apartment buildings, all the way south.

That practically covers the four surrounding sections of the Jackson Park Theatre.

Q. Now, where is the Woodlawn, the old Woodlawn or Marvland, what is now known as the Maryland Theatre?

A. At 63rd and Maryland.

Q. And what is the nature of that district?

A. At 61st—60th and Midway, to 63rd is apartment buildings, homes and a few hotels.

North of there is the University of Chicago. West of there is a section of apartment buildings and homes for half a mile, and then the old White City comes in.

South of the Maryland and east is a section of apartment buildings and hotels; the same section as the Jackson Park, northwest of the Jackson Park it is the same
244 district as the Jackson Park northwest, only it is southeast of the Maryland.

Q. What is the nature of the business district around the Maryland; is there business?

A. Yes; it is a business section.

Q. Are there vacancies there?

A. Yes.

Q. In that section?

A. Quite a number of vacancies on 63rd street. The street has deteriorated. A lot of taverns have come in there. The neighborhood has gone down. It has gone down very fast. There is quite a number of vacancies on 63rd Street.

Q. Now, is the Maryland Theatre a competitor of yours in the sense it competes with you for patronage for your respective theatres?

A. Yes, sir.

Q. And has it always been a competitor of yours during the time the plaintiffs have owned the Jackson Park Theatre?

A. Yes, sir.

Q. Now, where is the Jeffery Theatre located?

A. The Jeffery Theatre is located at 71st and Jeffery, a half mile south and a half a mile east.

Q. And what is the nature of the district in which
245 the Jeffery Theatre is located?

A. The Jeffery is located,—draws from the same section northwest that the Jackson Park draws from southeast; it draws from a section south of 71st street. That is populated with hotels and home and apartment buildings. It goes east a half a mile, where the Country Club, Apart—where the Country Club lay, South Shore Country Club and the Lake. Half of their drawing, I would say, is practically in the Jackson Park vicinity.

Q. Well, they are a competitor of—

A. Yes.

Q. (Continuing:)—the Jackson Park?

A. Yes, sir.

Q. Going back to the Maryland for a minute, does the Maryland have a balcony?

A. No, sir.

Q. In the Theatre?

A. No, sir. The Maryland has all seats on one floor.

Q. And do you know how many seats it has?

A. 1498 seats, I am pretty sure.

Q. How about the Jeffery, does the Jeffery have a balcony?

A. Yes, sir.

246 Q. And do you know whether or not the balcony is open or closed?

A. I think at the present time, I am positive, that they only use the balcony—

Mr. O'Brien: I will object to the "present time". The present time hasn't anything to do—

The Witness: (Interrupting:) Well, at any time, they don't use the balcony if there is no necessity to use it; they just don't open up the balcony to leave people up there if they have a lot of seats on the main floor.

Mr. McConnell: Q. And how many seats are in that balcony, do you know?

A. No. They have 1800 seats in the Theatre; and the amount of seats on the main floor is less than the Jackson Park.

Mr. Seeley: Is this still the Jeffery?

Mr. McConnell: This is the Jeffery.

Q. Now, where is the Tower Theatre?

A. The Tower Theatre is located at 63rd, between Blackstone and Harper.

Q. Will you describe the nature of the district in which it is located?

A. West—east of the Tower is the Park, and the
247 Hyde Park High School. North of the Tower is apartment buildings.

Northwest of the Tower is the University of Chicago, at 60th street.

South of the Tower is apartment buildings and homes, which is the same section that is northwest of the Jackson Park Theatre.

Q. What is the nature of the—what is the present condition of that neighborhood in which the Tower is located; are there vacancies in the stores?

A. Yes, sir; there is a lot of vacancies. It has become

strictly a transient neighborhood. The apartments have all turned into rooming houses. It is very heavily populated with rooming houses.

Q. Now, where is the Grove Theatre located?

A. The Grove Theatre is located at 76th and Cottage Grove.

Q. Is it 7620 Cottage Grove?

A. Right, sir.

Q. And what is the nature of the neighborhood in which that Theatre is located?

A. Homes and apartment buildings; a lot of vacant property out there.

East of there, three blocks east of there is a park, 248 that I imagine is a half a mile square. There is a lot of manufacturing in all parts of the districts surrounding the Grove Theatre, a lot of small manufacturing companies.

Q. And how far away in miles is the Grove Theatre from the Jackson Park Theatre?

A. A little over two miles.

Q. How about the Tivoli Theatre, where is that located?

A. The Tivoli is located at 63rd and Cottage Grove.

Q. And what is the nature of the neighborhood in which that Theatre is located?

A. The neighborhood has deteriorated very bad. Practically the whole west side of the street, where the Tivoli Theatre is, is either tore down or the stores are vacant. There is a few of them rented, but most of them are vacant. A lot of the property has been torn down.

Q. Well, describe a little more fully the nature of that district?

A. West of the Tivoli, for a matter of a half a mile, is a very de—well, in the last number of years they put a lot of small homes in that section. The section is, was originally, up until they put these homes in, more of a rooming house district. The neighborhood has gone 249 through a change of population. The neighborhood—

Q. In what way?

A. And the neighborhood has become a very high class colored section, where a lot of colored people have bought homes in that section, and built homes.

Northwest of there was a section that was known as the old race track section, that up until last year was in very bad condition, owing to that they did not sell the property.

or the property just laid idle in the last year and a half. The section has gone into a colored population that has now become very heavily populated.

Southeast of the Tivoli, 67th street, where the Oakwood Cemetery comes in, is a section of rooming houses, hotels, and some homes; the same section that is northwest of the Jackson Park Theatre.

Northeast of the Tivoli, up until the Midway, where the University of Chicago comes in, is a section of old apartment buildings, that have turned into rooming houses.

Q. Does that give a complete description, do you think, of that district now?

A. I do, sir.

Q. All right. Now, where is the Avalon Theatre located?

250 A. The Avalon Theatre is located at 79th and Stony Island Avenue.

Q. What is the nature of that district?

A. Northwest of the Avalon is a very heavily populated section of manufacturing business. Northeast of the Avalon is a section of apartment buildings, homes, and not a very heavily populated district. And southeast of the Jeffery Theatre—

The Court: Q. Jeffery or Avalon?

A. I mean the Avalon, sir. Is a section that has not been developed. It is very undeveloped. There is really a few homes out there, but not many. There is miles and miles of just vacancies. Southwest of the Avalon is a section very—I would say a half a mile, where it is mostly homes and a few apartment buildings. A little farther west than that you come into more apartment buildings.

Now, those theatres that I have asked you about, are they the immediate competitors of the Jackson Park Theatre?

A. Yes, sir.

Q. Now, Mr. Salkin, when did you first have any first hand knowledge of the theatres and their playing positions, that I have just asked you questions about?

251 A. When I first went into the moving picture business as a salesman.

Q. And when was that?

A. In 1917.

Q. Now, the first time you knew this district, what theatre played pictures first in that district?

A. Jackson Park, sir.

Q. And what period of time, do you recall?

A. Until the other theatres were built. As the other theatres came in, the Jackson Park's running position, or first run, was taken away from them.

Q. Well, what theatre was first built of those that you have testified about?

A. The Tivoli Theatre.

Q. And when was that built, do you recall?

A. 1919, I am pretty sure.

Q. And after that Theatre was built, do you know how far back of the Tivoli the Jackson Park played?

A. The next week.

Q. Now, what do you mean by the "next" week? When would it start its pictures?

A. The Tivoli would start its pictures on Sunday, and run until the following Saturday, and the Jackson Park would run them pictures on Saturday if they saw fit, or they would play them in there some place; some
252 times they wouldn't play them on Sunday, but they could play them the following Sunday if they wished to play them.

Q. Now, after the Tivoli Theatre was built, what was the next theatre that came in?

A. The Maryland was built.

Q. And when was that, do you recall?

A. 1920—1920.

Q. And did the Maryland at that time play ahead of the Jackson Park?

A. No, sir.

Q. Where did it play with reference to the Jackson Park?

A. It first—first, it was playing the product the Jackson Park did not play, and that the Tivoli did not play, and then later they played product in the same week.

Q. And is that what you call a split product arrangement?

A. Well, yes; yes, it would be a split product.

Q. All right. How long did that go on, if you know?

A. I imagine it went on for about a year, sir.

Q. Well, do you know of your own knowledge?

A. No, I wasn't—I don't recall, sir.

253 Q. All right. Now, what was the next Theatre that came into the district?

A. The Jeffery Theatre came in in 1924. It was built by a man by the name of Mr. Goldberg.

Q. Mr. Goldberg?

A. Yes, sir.

Q. And where did that Theatre play with reference to the Jackson Park, when it came in?

A. At the start they played repeat on the Jackson Park, and then—

Q. What do you mean by "repeat"? The jury doesn't know these technical words?

A. After the Jackson Park played a picture, they played it.

Q. All right.

A. Then in the following year they started to buy some of the pictures clear of the Jackson Park, and some of them they repeated on the Jackson Park. And that went on for a matter of about a year and a half to two years, when the National Theatres Circuit took over the Jeffery Theatre and took all the product away from the Jackson Park.

Q. Now, what was National Theatres?

A. It was a circuit of theatres owned by Cooney Brothers, not a producer distributor circuit, but an 254 independent circuit of theatres. There wasn't any producer circuits in them days: no producers owned any theatres in Chicago.

Q. How many theatres in this district were in the National Theatres Circuit?

Mr. O'Brien: At what time?

Mr. McConnell: At this time he is talking about, 1924 or '5.

A. About eight.

Mr. McConnell: Q. Can you name them?

A. Jeffery, Chatham, Cosmopolitan, The Highland, the West Englewood, the Stratford.

Q. Is that all that you recall at the moment?

A. Yes.

Q. Well, now, did they acquire any other theatres in that district I am talking about now? I am talking about the district which the Jackson Park is located in, and which these other theatres are.

Mr. O'Brien: I don't understand that the witness said these other theatres are located in the Jackson Park district.

Mr. McConnell: I am referring to the theatres about which he has described, their location, in his previous testimony.

255 Mr. O'Brien: Oh, I see; I am sorry.

The Witness: Did they acquire any more after that?

Mr. McConnell: Yes. After they acquired the Jeffery.

A. Acquired the Jeffery. They acquired the Avalon.

Mr. O'Brien: Well, I—well, I am sorry.

Mr. McConnell: Proceed.

The Witness: In that section, that's all.

Q. Just the two?

A. Yes, that is right.

Q. The Jeffery and the Avalon?

A. That is right.

Q. Now, at that time were there any other chain of theatres operating in your competitive district?

A. Yes, sir. L. & T.

Q. What is L. & T.?

A. Lubliner & Trinz.

Q. And what theatres did they hold?

A. The Tower, and the Grove.

Mr. Adcock: The Tower and what other?

Mr. Seeley: And the Grove.

Mr. McConnell: Q. And any other?

A. No, sir.

Q. That is all?

A. Yes.

256 Mr. McConnell: Speak up just a little bit louder, Mr. Salkin.

The Witness: Yes, sir.

Mr. McConnell: Q. Now, when did the Grove come into the district?

A. The Grove came in in about '28.

Q. And where did it play pictures when it came in?

A. C week of release; that is, one week ahead of the Jackson Park.

Q. Did the Jackson Park play any product clear of the Grove, at that time?

A. Yes; the product that they did not run.

Mr. Adcock: I didn't hear that.

Mr. O'Brien: "The product that they did not run".

Mr. McConnell: Q. Now, when was the Hamilton Theatre built?

A. The Hamilton was built ahead of the Jackson Park, but was there when the Jackson was built. Now, the exact date I don't know, sir.

Q. In the early days did it always play behind—I will withdraw that.

Where did it play in the early days with reference to the Jackson Park?

A. In reference to the Jackson Park? After the
257 Jackson Park.

Q. Now, in those early days that you have been talking about, were there successive weeks of release in that district, of pictures?

Mr. Seeley: What early days?

Mr. McConnell: 1918 and '24.

A. No. In them days there was protection of so many days. A theatre like the Jackson Park would play, and he would have seven days protection on a theatre like the Hamilton.

Q. And that protection you are referring to is what? Tell us what it is.

A. That the Hamilton could not run a picture till that many days after the Jackson Park finished its run.

Q. And that was some stipulation in a contract, was it not?

A. Yes, sir.

Q. Now, did you or the Jackson Park Theatre have anything to do with the setting up of this system of release which you have described here?

A. No, sir. No, sir.

Q. Were you consulted about it at all?

A. No, sir.

Q. At any time?

A. No, sir.

258 Q. Now, in 1936, the theatres in your district were playing a game called screeno, or were they not?

A. They were playing some form of a game. Some called it bank night, some called it pay night, others ran a game called screeno, but they all had some game, they all had a game of some sort.

Q. Does that apply to the Balaban & Katz Theatres—

A. Yes, sir.

Q. (Continuing:)—in that district?

A. Yes, sir.

Q. And the Warner Bros. Theatres—

A. Yes, sir.
Q. (Continuing:)—in that district?
A. Yes, sir.
259 Q. And what was the game that you were playing at the Jackson Park?
A. I was playing Pay Night and Screeno.
Q. And how many nights a week?
A. Three.
Q. Every week?
A. Yes, sir.
Q. And for how long a time?
A. One year.
Q. And you stopped that about the time the other theatres did, did you not?
A. Yes, sir, in December, 1936.
Q. Now, were the other theatres playing their games on the same night with you or on different nights?
A. No, they played on different nights. Practically all of us played on different nights. I would not say that every one of them, but I think most of them played on different nights.
Q. Do you know whether or not you lost any patronage to the other theatres by virtue of Screeno or Bingo?
A. On the nights we did not have it they would go to the other theatres. People travel around to play them games.
Mr. Adcock: I object to the question about Bingo. Bingo has not been mentioned as being played at the
260 Jackson Park.
Mr. McConnell: Well, I am mixed up on the term.
The Court: Screeno and Pay Night.
Mr. McConnell: I have heard of Bingo somewhere.
Mr. O'Brien: I think Bingo is played at the bazaars.
Mr. McConnell: Q. Well, now, you have testified here that after 1936 or during 1936 double features were introduced?
A. Yes, sir.
Q. By the Balaban & Katz theatres, is that right?
A. They played them, they were the ones that started playing them out in that section, yes, sir.
Q. Did they start that in all their theatres at the same time?
A. I don't think all at the same time. In different weeks, they started in different weeks in different sections

of the city, but in our section they started in about November of 1936.

Q. Now, after that you said that you were unable to get what you call free product of any kind.

A. After that I was able to get very little clear product.

Q. Clear product?

A. They absorbed everything by running twice as much product as they had ran previously.

Q. Now, what effect, if any, did that have upon 261 the earnings of your Jackson Park Theatre, if you know?

A. The earnings started to go down and continued to go down.

Q. And from what base period?

Mr. Seeley: I object to this line of testimony. I believe the books of the theatres are the proper evidence of what the earnings were at any time.

Mr. McConnell: I am not trying to prove the earnings or specific loss of earnings; I am trying to prove the motivating cause and I think I have a clear right to do this in the testimony of this witness, who is running this business and is familiar with it.

Mr. O'Brien: Well, I have no objection if counsel will speak of admissions and not characterize the amount, but if he is talking of earnings that is something else.

Mr. McConnell: I think counsel's point is well taken there. I am perfectly willing to refer to admissions as distinguished from earnings.

The Court: Does that satisfy you, Mr. Seeley?

Mr. Seeley: That is all right.

The Court: All right, use "admissions" instead of "earnings."

Mr. McConnell: Q. What effect, if any, did that 262 have on your admissions to the Jackson Park Theatre?

The Witness: A. The admissions dropped and continued to drop.

Q. During what period of time?

A. From 1937 on they started to drop.

Q. Down to the date of the institution of this lawsuit, is that right?

A. Well, in the year of 1939 it showed a little increase in business, but our business was nothing like it was in '36.

Mr. McConnell: I am talking about admissions now.

The Witness: That is what I am talking about.

Mr. McConnell: Q. You have admission figures, do you not, for those, in a book of some kind?

A. Yes. The lawyers have them figures.

Mr. McConnell: Mr. Adcock, I wonder if I could have my book back.

Mr. Adcock: Ask Mr. O'Brien.

Mr. O'Brien: Coming up.

(Books handed to counsel)

Mr. McConnell: I will ask that these books be marked with the next numbers.

263 (Books marked Plaintiff's Exhibits 8, 9 and 10, respectively, for identification.)

Q. Mr. Salkin, I show you a document or exhibit marked for identification Plaintiff's Exhibit 8, and ask you to examine that and state, if you will, if the document is in the same condition now as the last time you saw it.

(Witness examines book)

Mr. McConnell: I will withdraw that question. Counsel advises me, if the Court please, that they are not going to make any objection based on lack of underlying proof as to the authenticity of the document or the making of the entries, so I can dispose of that foundation proof.

I will offer in evidence, then, on that statement, these books as Plaintiff's Exhibits 8, 9, and 10, except that I do not offer the entries which are made after the institution of this lawsuit, which I do not think are material here.

Mr. O'Brien: Well, so far, if the Court please, I don't see that there is anything which would justify the admission at this time of the books at large, on the point that Mr. McConnell is speaking about, the admissions a year before his Bank Night and a year after would be appropriate on the point, but I want to note that

264 objection.

The Court: I take it they go in upon his promise he is going to connect that all up with his general proof of the charge contained in his complaint.

Mr. Seeley: That is the point I was trying to make. It is really hard to determine at this time their competency, but it will be subject to objection later on.

The Court: They will go in until the time he does connect the evidence with the matters in his complaint.

Mr. Adcock: Well, I take it we have a right to make a motion to strike at any time.

The Court: Suppose we take a recess for ten minutes.

(Said books, so admitted in evidence were marked PLAINTIFF'S EXHIBITS 8, 9, and 10, and are in words and figures as follows:)

265 (After the recess the following further proceedings were had herein:)

Mr. McConnell: Will you mark these with the next exhibit numbers?

(Documents marked Plaintiff's Exhibits 11 to 43, inclusive, for identification.)

Q. Mr. Salkin, going back to your operation of the Jackson Park, there are a couple of topics I want to cover. You spoke of the personnel of the theatre. What personnel do you have there at the theatre?

A. Well, we have a complete staff of ushers, doormen, assistant manager, my cashiers, my operators, my janitors.

Q. All right, now let us have how many they are. How many ushers do you have?

A. We use seven ushers, two cashiers, one assistant manager, two motion picture operators, one janitor, and myself,—fourteen employees.

Q. Now, what do you do in the way of publicity for the showing of pictures at the Jackson Park, in the way of advertising?

A. Newspaper advertising, programs, screen advertising, lobby displays, special displays, and at times we use special forms of advertising in the way of special programs, or special pluggers we call them.

266 Mr. Seeley: What was that last?

The Witness: Pluggers.

The Court: Pluggers.

Mr. Seeley: Oh, thank you.

Mr. McConnell: Q. I show you a document which has been marked for identification Plaintiff's Exhibit 11, which purports to be a folder of the Warner Bros. contract with Jackson Park, for the years 1940 to 1941. Will you examine that folder, please, and the signatures on the contracts and state whether or not you can identify them?

The Court: Any dispute about those contracts?

Mr. Seeley: Not that I know of.

The Court: How would it affect Mr. O'Brien, Warner Bros? He is asking him to identify them.

Mr. O'Brien: I just have not looked at them. I can take a look.

The Court: I imagine if they were shown to you it might shorten the testimony.

Mr. O'Brien: Surely.

The Court: That is the only reason I asked the question.

Mr. Seeley: Perhaps we could finish with the direct and then adjourn over the noon hour and we will
267 check these and we will probably stipulte.

Mr. McConnell: That is perfectly agreeable with me.

The Court: We can do that.

Mr. O'Brien: Any I have seen are all right with me.

The Court: I think Mr. Seeley's suggestion is a good one. During the noon hour you can easily check over these contracts that he proposes to offer.

Mr. Adcock: Are the folders in the same shape that they were?

Mr. McConnell: Yes, they are exactly the same. Mark this the next number you have.

(Document marked Plaintiffs' Exhibit 44 for identification).

Mr. McConnell: I offer at this time a statement of income and expense for the Balaban & Katz Corporation's theatre, the Maryland, a statement prepared by Balaban & Katz and given to me by their counsel.

The Court: Any objection?

Mr. Seeley: I object to it as irrelevant.

Mr. Adcock: I object to it on the grounds it is irrelevant and immaterial.

Mr. O'Brien: Well,—

The Court: I mean as to the accuracy of the statement, do you have any objection to that?

268 Mr. Seeley: No, sir.

Mr. O'Brien: No, but there is an objection which cannot be covered by the general objections on which we have an understanding.

The Court: Yes, I understand.

Mr. O'Brien: Over and above that there is a material objection, on which we would like to be heard before that is even ruled on.

Mr. McConnell: I wanted to examine the witness with respect to the rentals and ask him questions which are predicated upon the rentals of the Maryland Theatre. That question was asked and objected to because there was no comparative base, if your Honor will recall.

Mr. O'Brien: I have no objections other than already made, no objections going to the admissions or the film

rentals, but everything else in the exhibit I do object to.

The Court: I understand that is all he is interested in.

Mr. McConnell: That is right, and I cannot examine the witness on the document unless it is in evidence.

Mr. O'Brien: Well, there are other things in the document outside of that on which, I say, we want to be heard before it is admitted.

Mr. McConnell: Well, if counsel will waive objection
269 to the examination of the witness on a document not in evidence, that takes care of this situation.

Mr. O'Brien: All right.

The Court: Very well.

Mr. Adcock: Has that been marked?

Mr. McConnell: Yes, it has been marked.

Mr. Adcock: What?

Mr. McConnell: Plaintiff's Exhibit 44 for identification.

Q. I show you a document marked for identification Plaintiff's Exhibit 44, and direct your attention to the rental as shown for the Maryland Theatre for film during certain years. Do you see those figures?

The Witness: A. Yes, sir.

Q. Will you read those figures for the respective years?

A. For the year of 1936, $40,414.11. For the year of 1937, $43,515.00. For the year of 1938, $41,478.93. For the year of 1939, $40,420.90. For the year 1940, $42,448.21. For the year of 1941, $40,104.99. For the year of 1942, $38,395.46.

270 Q. Now, Mr. Salkin, with those figures in mind, were you, as manager of this theatre and acting for the four plaintiffs in this case, ready, able and willing in all those years that you have mentioned to pay more rental for pictures in that same run, in that C run, for the Jackson Park?

Mr. O'Brien: Well, I object to that again. As a matter of law it does not make any difference. The same objection as yesterday.

The Court: You had a different objection yesterday. You had objection yesterday that he had no basis upon which to make it. He now claims that he has a basis. The objection is overruled.

Mr. Adcock: Further objection that those figures are gross figures for the year and that is taken on a different product altogether as rented or that are licensed. I don't see how that can be of any materiality at all.

The Court: The objection is overruled. He may answer the question.

Mr. McConnell: Read the question to the witness, please.

The Witness: Yes, sir.

The Court: He said the answer is "yes, sir."

271 Mr. McConnell: Q. Now, will you look at the admissions of the Maryland as shown in those respective years and will you read those, please?

A. For the year of 1936, $173,448.40.

For the year of 1937, $147,149.35.

For the year of 1938, $124,339.09.

For the year 1939, $130,194.54.

For the year of 1940, $127,986.01.

For the year of 1941, $120,605.81.

For the year of 1942, $130,691.21.

Q. Now, from your experience in the operation of the Jackson Park Theatre, and from your experience of your entire business life in this industry, can you state whether or not, if the Jackson Park had enjoyed a C run during the period mentioned, it would have been able to obtain the same, at least the same admissions at the Jackson Park?

Mr. O'Brien: I object to that, your Honor, on the ground that that, under the cases, is far too remote, conjectural and speculative, as against the well-defined type of proof there has to be in this proceeding.

The Court: I will sustain the objection.

Mr. McConnell: If the Court please, I would like to 272 be heard on that, because there is a case that has ruled squarely on that sort of proof, holding it is competent, the estimate of the party who has dealt with the business, who is familiar with it, for what it is worth. The weight may not be as great as some other proof, but it is the best proof of which the question is susceptible and the cases hold it is competent. I have a case here directly in point.

The Court: Suppose after we adjourn we look into his case. You can ask some other questions now, can't you?

Mr. McConnell: Yes.

The Court: After the jury retires we will look into that.

Mr. McConnell: And your Honor will withhold your ruling?

The Court: Yes, I will withhold the ruling until that time.

Mr. McConnell: Q. Mr. Salkin, would it be possible for you to operate the Jackson Park Theatre without the motion picture film which is licensed by the defendants in this case?

A. No, sir.

273 Mr. McConnell: Now, subject to the introduction of the contracts and questions that I am going to ask this witness about those contracts, and subject to this other question, I am through with this witness.

The Court: You are through with him?

Mr. McConnell: I can call another witness, or I can—

Mr. Seeley: I think if we are going to go over those contracts and discuss this case we had better —

The Court: Can't you do that while the other people are eating?

Mr. Seeley: I could. I would rather not.

The Court: I suppose the only intelligent thing to do, then, is to adjourn the jury until two o'clock and we will see what we can work out here while you folks are gone. The jury may be excused until two.

(The jury here left the court room.)

274 (The following proceedings were had out of the presence and hearing of the jury:)

Mr. McConnell: The case I refer to is the case of William H. Rankin Company against Associated Bill Posters of United States, 42 Fed. (2d) at page 152, and the Court's ruling is on page 155. The Court said:

"In its proof of damages, Rankin was permitted, under objection and exception, to show by the testimony of its treasurer and by a compilation he had made, based on the net profits of the business in 1911 and from his knowledge of business conditions when free of the defendants' unlawful interference what he considered would have been the normal increase of this plaintiff's business from year to year. He was permitted to estimate on this basis its probable yearly earnings from July, 1913, to June 30, 1918, and to explain how his figures were arrived at. The fact that this amount of the plaintiff's damages could not be expressed in exact figures did not make them speculative. There was no speculation as to the fact of actual damage. Its business had been seriously curtailed. The de-

275 fendants had caused the damage, and cannot be permitted to escape liability because it is difficult for the plaintiff to express in terms of dollars the damages it

has suffered. This evidence, while purely an estimate and introduced as such, was proof of a kind as definite and certain as the subject-matter admitted. It had to do with what was never actually earned because of the defendants' wrongdoing. The witness testified from his knowledge of the business history, made his calculation upon what appears to be a reasonable basis, and the defendants had ample opportunity by cross-examination or the offer of their own evidence on the subject to discredit him and show any fallacy in his reasoning or testimony. Whatever may be said of its weight, and that was entirely for the jury, we have no difficulty with its admissibility."

The Court: What do you gentlemen think about that?

Mr. Seeley: I am just reading up on the subject, Judge. I have a brief here that mentions the case. Just a minute.

276 Frankly, Judge, I cannot effectively offhand analyze and answer that case; I am not familiar with the facts. I should like to do so at two o'clock, and marshal the other authorities which I have ready access to on the same point.

The Court: Well, suppose we meet here at a quarter to two.

Mr. Seeley: A quarter to two. That is all right.

Mr. Adcock: The material I have I did not bring over. It is in my office.

The Court: Well, be here at a quarter to two and then we will finish up this argument.

Mr. Seeley: Yes.

The Court: Are you going to check over these other matters?

Mr. Seeley: Yes.

The Court: All right. Then we will see you folks at quarter to two.

(Whereupon the hearing of the above-entitled case was recessed until 1:45 p. m. of the same day, Wednesday, February 16, 1944.)

277 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois

Eastern Division.

Florence B. Bigelow, *et all*, *vs.* RKO Radio Pictures, Inc., *et al.* } Before Igoe, J. and J., Wednesday, February 15, 1944, 1:45 o'clock P. M.

Court met pursuant to noon recess.

Present: As before.

(And thereupon the following proceedings were had out of the hearing and presence of the jury:)

The Court: You may proceed.

Mr. O'Brien: Your Honor, I made an objection to the question relating to the introduction of any testimony on the basis proposed as to what this house would have done had it operated in C week instead of the position
278 in which it is and has right along been running, and Mr. McConnell cited case of *Rancin* v. *Associated Bill Posters*, which I consider to be quite in line with other authorities to which I had intended to refer but which is in no way applicable to the situation which you have here.

The pertinent part of 42 Fed. 2d, is at page 155, and is to this effect, "There was no speculation as to the fact of actual damage. If business had been seriously curtailed", existing business, if you please. "The defendants had caused the damage, and can not be permitted to escape liability because it is difficult for the plaintiff to express in terms of dollars the damages it has suffered. This evidence, while purely an estimate and introduced as such, was proof of a kind as definite and certain as the subject matter admitted. It had to do with what was never actually earned because of the defendants' wrongdoing."

Before I come back to that, your Honor, I would like to call attention to a case reported in 229 Fed., *American Sea Green Slate Company* v. *O'Halloran*, at page 77, just

by way of reminder to the Court of some of the prin-
279 ciples which are applicable to a damage situation in a case of this kind—

Mr. McConnell: What was the page number, Mr. O'Brien?

Mr. O'Brien: 77. At page 79:

"To recover under the seventh section plaintiffs must show that, as a result of defendants' acts, actual damages were sustained—damages in some amount which is susceptible of expression in figures. These damages must be proved by facts from which their existence is logically and legally inferable—not by conjectures, or estimates. They must not be speculative, remote or uncertain. As we understand the law, a jury may not merely guess that plaintiff lost $1,000 or $10,000 which they might have made, even if they feel reasonably sure that some loss was sustained. They can not award damage as they do for pain or suffering in an action for personal injuries, or for reputation as they do in a libel suit.

"That was a defect in the original Sherman Act from the viewpoint of the individual trader; the treble damage section frequently did not give him relief. He could only get such relief by stirring up the government to apply
280 for an injunction and dissolution of the combination. That defect is now cured by the Clayton Act."

Your Honor will recall that the chief reason for the enactment of the particular provision for injunctive relief was the ordinary inability of the plaintiff in a case of this kind to establish damage within the rules.

So much for the history.

Now, the leading case on this question is reported in 111 Fed. at page 96, the case of *Central Coal & Coke Company* v. *Hartman*, the Opinion by Mr. Justice Sanborn, and that case has been carried down in the Citator to the most recent of cases, so that its age is no objection; and I cite it merely as the clearest expression of the rule. It is then my contention to show that that same rule, the two in which I am chiefly interest, the two points are carried into the decisions of the Supreme Court, but it is those two requirements which the plaintiff has failed to meet here.

In this case the complaint was that plaintiff had been engaged in the sale of coal in Kansas City since 1893. In 1896 he and the defendants had formed a club to

establish and control the price at which coal should
281 be sold in Kansas City, Kansas and Missouri, and to restrain commerce among the States. He withdrew from the Club in '97, and thereafter the defendants and their associates would not sell him Salt Fork or Cherokee Coal at any other prices than those which they had established for the sale of coal at retail to consumers; that this action of the defendants caused him a loss of all of his trade, and I want to stress that, your Honor, a loss of all his trade it theretofore established in Salt Fork Coal, a loss of his business in Cherokee Coal, and made it impossible for him to make contracts for future delivery of coal because he was uncertain whether he could obtain it, so that he suffered damages in the sum of $2500, and the jury found damages in his favor.

The only damages he claimed in the petition, and the only loss which he sought to prove at the trial were the loss of some of the expected profits of his business of buying and selling coal between 1897 and 1899.

Now, says the Court:

"Compensation for the legal injury is the measure of recoverable damages. Actual damages only may be
282 secured. Those that are speculative, remote, uncertain, may not form the basis of a lawful judgment. The actual damages which will sustain a judgment must be established, not by conjectures or unwarranted estimates of witnesses, but by facts from which their existence is logically and legally inferable. The speculations, guesses, estimates of witnesses, form no better basis of recovery than the speculations of the jury themselves. Facts must be proved, data must be given which form a rational basis—"

And I stress that, to two things, being the establishment of the injury, and, second, the basis "for a reasonably correct estimate of the nature of the legal injury and of the amount of the damages which resulted from it, before a judgment of recovery can be lawfully rendered. These are fundamental principles of the law of damages. Now, the anticipated profits of a business are generally so dependant upon numerous and uncertain contingencies that their amount is not susceptible of proof with any reasonable degree of certainty; hence the general rule that the expected profits of a commercial business are too remote, speculative and uncertain to warrant a judgment for their loss."

Citing various cases, including United States 283 Supreme.

"One, however, who would avail himself of this exception to the general rule, must bring his proof within the reason which warrants the exception."

And this is important:

"He who is prevented from embarking in a new business can recover no profits, because there are no provable data of past business from which the fact that anticipated profits would have been realized can be legally deduced." Citing among other cases, 45 Illinois, 208.

And again:

"The truth is that proof of the expenses and of the income of the business for a reasonable time anterior to and during the interruption charged, or of facts of equivalent import, is indispensable to a lawful judgment for damages for the loss of the anticipated profits of an established business.

"Expected profits are, in their nature, contingent upon many changing circumstances, uncertain and remote at
284 best. They can be recovered only when they are made reasonably certain by the proof of actual facts which present data for a rational estimate of their amount."

Now, the Court reached its conclusion, or had reached its conclusion and said: That it will be unnecessary and unwise to consider other questions raised because the nature of the evidence of damages introduced and withheld by plaintiff renders it improbable that it will ever be necessary to consider the other issue, the Court being of the view that under those circumstances, although the Court sent it back for a new trial, it would never be possible to make out a case.

Now, applying that to the situation here, no evidence that the plaintiff, or plaintiffs, for any such requisite period of time ever conducted or ran their theatre in any position but first week, at the admission prices, the minimum admission prices which controlled exhibition in that week, and for film rentals which are applicable to pictures bought in that run, and not applicable to pictures bought in a prior run. In short the man doing business in one run is no more qualified to state, and no more able to state to
a Court or jury what his profits had been or might
285 have been than one who never engaged in a business at all.

Again, even if a comparative period, and you have a basis, a basis predicated upon the results and facts and figures which obtained in the conduct of your business, over the base period and in the run which he is talking about, C run, it is of no assistance to the Court to tell what the admissions were or the film rentals, or any other items for a run in first week.

Here would be a perfect case had he been running in C week and had figures for that, and as the result of an alleged conspiracy been pushed back to first week, where he had the contract in the earnings or admissions, then you would have a base, but that is not the situation here.

Now, the case in 282 U. S., *Story Parchment Company* v. *Patterson Parchment Paper Company*, 282 U. S., 555, at page 561, carries that same idea through, the Court stating:

"There was evidence from which the jury reasonably could have found that, in pursuance of the conspiracy, respondents sold their goods below the point of fair profit, and finally below the cost of production; that peti-
286 tioner had an efficient plant and sales organization, and was producing a quality of paper superior to that produced by either of the three companies; and that current prices, shown in detail, were higher during a period antedating the unlawful combination and price cutting in pursuance of it than afterward. It does not necessarily follow, of course, that these higher prices would have continued",—

They had existed, but:

"It does not necessarily follow, of course, that these higher prices would have continued except for the conspiracy, but it is fair to say that the natural and probable effect of the combination and price cutting would be to destroy normal prices; and there was evidence of the prices received by petitioner before the cut prices were put into operation."

Here you have no evidence over the requisite period of time showing what the operations in C week would have been, or what the result of those operations would have been.

And again in 260 U. S., in the case of *Kehoe* v. *Chi-*
287 *cago & North Western Railway Company*, and my reference to it here is 67 Law Edition, at page 183, there the Court says at page 188:

"Finally, not only does the injury complained of rest on the hypothesis, but the damages alleged are purely speculative. Recovery cannot be had unless it is shown that as the result of defendant's acts",—it must be a result of acts,—"damages in some amount susceptible of expression in figures resulted, these damages must be proved by facts from which their existence is logical and legally inferable."

The same as in the 111.

"To make proof of such facts would be impossible in the case before us."

So that the first thing which must appear, to entitle the plaintiff to recover under the facts assumed in his question is that there was an injury to the plaintuf or his business resulting from the alleged conspiracy, an injury which arose through the prevention of his playing in C week rather than in first week.

In one of these cases, your Honor, indeed in the case counsel cites, there was a man with an established
288 business. The effect of the conspiracy was to stop his business, stop it cold. Thus the fact of injury to his business was established and made plain. Now, once that is done you have a situation where you can begin to conjecture, but only if you first set up the base. He was doing business. He was stopped. He had the figures showing what he had been doing, and from the point of impact he goes on to show that he would have continued to make that money with the same type of business, not by going out and selling some other article, not as, in this case, by playing in first week, but moving up to C week, having different admission prices, higher admission prices, and paying more film rental.

In the particular case, the injury was apparent. The business was stopped. The basis was apparent because he had the figures for it, and from there in you can start to measure; and I will agree that the mere fact that you can not show exactly what it was, when you start with those points and go on, that doesn't stop the proof, he has neither proof of injury by reason of being stopped from going to C week or pushed out of C week; he was never in it.

Then, in the second place he hasn't got any base
289 from which he can show what he had earned in C week, to help the Court or jury in deciding what he might have continued to make in C week if he had been let alone.

Now, he asked the witness, starting from nowhere, to give his opinion as to what he would have made had the plaintiffs operated in C- week, in a run which they have never enjoyed at all.

290 Mr. Seeley: May it please the Court, I finally went without that lunch, about which I was so hopeful before we adjourned. I engaged in some legal research, and came up with the same decisions and same authorities as Mr. O'Brien.

I am not repeating any of them, but I do have this additional to say about the case cited by Mr. McConnell, the Rankin case.

My purpose is to show to your Honor that in the Rankin case there was a basis for the witness's estimate, consisting of very careful accounting figures, and studies and analyses of the business during the base period which was used as a comparison. That does not appear fully from the Opinion. All that the Opinion says is that the Treasurer testified by a compilation that he had made based on the net profits of the business in 1911, and from his knowledge of the business.

Fortunately I was able to find a reference to the record in that case, upon which the Court rendered that decision; and it appears that this is what the record showed:

The evidence was introduced to show the gross earnings which the plaintiff actually had made in the past from deals relating particularly to posting billboards. To
291 obtain the net profits the plaintiff deducted a proportionate part of the general overhead costs of the department which embraced bill posting. In other words, he separated the restrained portion of the business from the rest of his business, on the basis of comparative gross sales of component parts, and on the basis of this data, the Treasurer of the plaintiff was permitted to testify to comparative estimates of future profits up until the time suit was brought. Elaborate details of past advertising, sales, of total and departmental expenses, of past profits realized by the whole business, and by this particular department, were introduced in evidence.

Now, that was the record, and that is the Rankin case, upon which Mr. McConnell relies squarely, within the doctrine of the Hartman case, from which Mr. O'Brien read at length, and which requires that there must be a solid basis of fact upon which to base an opinion.

I should also like to call attention to the fact that that Rankin case was decided by the Second Circuit Court of Appeals in 1930; and lest there be any doubt as to what that court realized to be the limitations of its decision,
292 I would like to cite *Baush Machine Tool Company* v. *Aluminum Company*, in 79 Fed. 2d, at page 217, which is a decision of the Second Circuit, in 1935, where the Court said:

"In *William H. Rankin Company* v. *The Associated Bill Posters*, 42 Fed. 2d, 152, we upheld the admission of an estimate of lost profits, but there was a proper basis for the estimate in that case afforded by a period of profitable operation prior to the defendants unlawful interference which prevented a continuance of the former success."

Now, I do think that helps point up the fact that Mr. O'Brien stated to your Honor, that under the general doctrine of the Hartman case there must be a factual basis, that the opinion which can be given from the witness stand can not simply be a guess as to what the operations might produce under conditions which in fact have never prevailed.

Thank you.

293 Mr. Adcock: If the Court please, the cases that I had made a study of, and which I expected to cite, are those that have already been cited by counsel, by Mr. Seeley and by Mr. O'Brien.

However, there is one additional case which I think is probably of importance for your Honor to consider, and it is an opinion by Justice Cordozo, in the case of *Broadway Photo Play Company* v. *World Film Corporation*. It is 121 Northeastern, page 756; 225 New York 10, 104.

That case lays down the rule that has been suggested by other counsel; reference to the necessity of there being some basis from which the actual damage can be determined; it can not be left to conjecture, as to what would be earned, or what the admissions would be if certain things had taken place; that is, if they were exhibiting pictures in C run, an earlier playing position, never having had any experience in doing that, and there being no basis for it; and I am merely citing that case, the Opinion by Justice Cordoza, and the entire Opinion is short,—I will read it to your Honor if your Honor would desire to have it read; but I think it supports the additional authority of those that have been cited.

294 Mr. McConnell: If the Court please, I think much of this argument has gone to the weight rather than the admissibility of this evidence.

The Rankin case was an anti-trust case, no question about that. It came from a good Circuit, and it refers to the *Eastman Kodak Company* case, 273 U. S., 47 Supreme Court Reporter, 400.

The thing that counsel have referred to here is that the language—this evidence, while purely an estimate, and introduced as such, was proof of a kind as definite and certain as the subject matter admitted.

Now, the rules of evidence are predicated upon the best evidence to be adduced in a course of which the subject matter is susceptible.

Now, of course, we are dealing in this case, we have to, of necessity, deal in this case with what happens to people that did not come to the Theatre. What is our loss from that? Our whole case is predicated upon the operation of what we claim a conspiracy against a going business, which keeps patrons out of this Theatre.

Now, it of course is impossible to show in the ordinary accepted sense of dollars and cents what would happen
295 to the patron who did not come into the Theatre. There is no other way of proving it except by the estimate of somebody who is conducting a going business, dealing with a going business, and his telling the jury for what it is worth, what would happen if the situation against which he complains is not present.

Now, this Court said, and counsel neglected pointing this out to your Honor in this language here, which says: Whatever may be said of its weight, and that was entirely for the jury we have no difficulty with its admissibility. The witness testified from his knowledge of the business history, made his calculations upon what appears to be a reasonable basis, and the defendants had ample opportunity, by cross-examination or the offer of their own evidence, to discredit him and show the fallacy in his reasoning.

Now, I submit we have not got before us on this motion anything except the question of whether or not this evidence is admissible as the best evidence of which this present situation is susceptible of proof. They can cross-examine this witness. They can put on their own witness.

They can show any fallacy in his reasoning. All that
296 is before the jury. But I submit that under this case, and under the Eastman Kodak Company case we are entitled to make the proof, and the jury can judge of its weight.

There is nothing in these cases which hold evidence is not admissible. Apparently these cases are ruling upon whether or not a verdict should be directed. This is the only case which deals directly with the admissibility of evidence which has been cited here, and I submit that the evidence is admissible.

The Court: Well, under the arguments that have been made here, the objection will be sustained.

What about these other matters that you folks were going to have a discussion about during the recess?

Mr. Seeley: The contracts have been looked through; and it can be stipulated that they are the contracts which they purport to be.

The Court: Bring in the jury.

Mr. Seeley: It has been pointed out that we have not been able to check to see that they are all of the contracts, but those that are here are genuine contracts between the parties.

297 Mr. McConnell: I would like to make an offer of proof on that.

The Court: All right.

Mr. McConnell: Perhaps we had better do that before the jury comes in.

The Court: They are half way out here now. You better wait until the recess, then you can make the offers of proof.

Mr. McConnell: All right.

298 (And thereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: Do you want the same witness on the stand?

Mr. McConnell: The same witness, yes.

Has counsel completed their examination of the contracts?

Mr. Seeley: Yes, sir.

The Court: I understand they stated they had.

Mr. Adcock: I am assuming they are the same; that is, you are going to introduce the folders, as I understand it.

Mr. McConnell: That is right.

Mr. Adcock: For certain years, and relating to certain

product. I am assuming that they are the folders of the same ones; they were when I examined them, and Mr. McConnell assured me they are.

Mr. O'Brien: I can vouch for that, Mr. Adcock. That is what we were doing part of the noon hour. If there is anything wrong with those, you lay it at our door.

Mr. McConnell: I wish to offer in evidence at this time Plaintiff's Exhibits identified as Nos. 11 to 30, which are the folders of the contracts between the Jackson Park 299, and the different distributors of motion pictures.

The Court: They may be admitted.

(Said documents so offered were received in evidence as PLAINTIFF'S EXHIBITS 11 to 30, and are in words and figures as follows, to-wit:)

300 RICHARD SALKIN, a witness on behalf of the plaintiffs, having been previously sworn, resumed the stand, was examined further and testified as follows:

Direct Examination (Continued) by Mr. McConnell.

Q. Mr. Salkin, I give you these Exhibits, which are in evidence as Plaintiffs' Exhibits 11 to 30, and ask you to refer to the contract of RKO, the folder with RKO.

A. What year, sir? There is different years.

Q. Well, for 1936-37 product.

Mr. Adcock: Has that an Exhibit number?

Mr. McConnell: He is trying to find it now.

Q. What is the Exhibit number?

A. 19.

Q. You are referring to Plaintiffs' Exhibit 19?

A. Yes

Q. Will you turn to the contract and direct your attention to a stipulation in the contract in regard to admission prices?

A. Yes, sir.

Q. And will you read to the jury the stipulation as to the provision of admission prices, and what they can
301 be, and the penalties involved in violating the minimum admission price?

A. "Admission prices".

Mr. Adcock: I move to strike that answer, or to object to that question.

The Court: Why?

Mr. Adcock: As to "penalties involved", being a characterization.

The Court: Strike out the word "penalties". Read whatever it is that he is directing your attention to.

The Witness: (Reading.) "Admission prices. The exhibitor, during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder, agrees to and shall charge for admission to said theatre the following prices: Matinee, adults, orchestra 15 cents, children 10 cents. Evening, adults, orchestra 25 cents, children orchestra 10 cents. Unless a greater admission price is specified above, the exhibitor will charge an admission of not less than 15 cents for adults at evening performances, and not less than 10 cents at all other performances. If higher admission prices are specified above, such higher prices shall be charged.

"If during any such period less than said admission
302 prices is charged, the distributor, in addition to all other rights hereunder, shall have the right to immediately terminate the license of motion pictures then being exhibited, by written notice to such effect to the exhibitor, and upon giving of such notice the license of such motion pictures shall forthwith terminate and revert to the distributor; or provided the exhibitor is granted herein the period of clearance to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or provided no period of clearance is specified in the schedule, to withhold for a period not to exceed 60 days notice of the date which each motion picture thereafter deliverable hereunder will be available for exhibition by the exhibitor, and as to each such motion picture, the run thereof if any granted the exhibitor shall be deemed—

Mr. McConnell: You are beyond "Admission Prices", minimum admission prices now, are you not?

A. I am in that same clause.

Mr. McConnell: All right. Go ahead.

The Witness: (Reading.) "—revoked, and the exhibitor agrees to exhibit each such motion picture after notice of available dates thereof, upon the date or dates de-
303 termined as provided in Clause Sixth."

Mr. McConnell: Q. Now, are similar provisions in all of your contracts with RKO, can you state?

A. Yes.

Q. That applies to what Exhibit, now?

A. It applies to all my feature contracts.

Q. And in what folder, what exhibit folder are you reading?

A. RKO, 1935-'36, '36-'37.

Q. All right. Now, will you get your folder for the other years that are involved here, for RKO?

Mr. O'Brien: I suppose those Exhibits speak for themselves, without the need to go all through them. They are in evidence.

Mr. McConnell: Well, this is the way of stating testimony to the jury with this witness that I think is—

The Court: I think he is entitled to do that.

Mr. O'Brien: All right.

The Witness: In the contract of RKO for 1940, the clause was in there, but it was not marked up.

Mr. McConnell: Q. What do you mean by that statement, there was nothing written into it?

A. There was nothing written into the clause, no, sir.

Q. But the clause, the printed part of the clause 304 was in there?

A. In writing, yes.

Q. For all contracts for that season?

A. That is right, sir.

Q. And what folder number are you referring to, what Exhibit number?

A. No. 20.

Q. All right. Will you turn now to your other years?

Mr. Adcock: Q. What are the years for that folder?

A. 1937-38, '38-39. Now, on the original contract, where they give an original out, it was not marked, but in the proof contract it was marked, the typewritten copy, it was in there, in the written copy of my application it was not in there.

The product of 1938 and '39 was the same clause; for the product of 1937 and '38 the same clause.

Mr. McConnell: Q. You have covered 1937, '38, and '39?

A. That is right, sir.

Q. Have you covered 1940 and 1941?

A. No. It is here.

Q. All right. What folder are you referring to? What is the Exhibit number?

A. 21. 1940 and '41, and '41 and '42, the same 305 clause was in all contracts.

Q. That covers all years now for the RKO contracts, does it?

A. Right, sir.

Q. Now, will you turn to your Vitagraph contracts? First turn to the first season, 1936.

A. 1935-36; '36-37, sir.

Q. What is the folder number; what is the Exhibit number?

A. 13.

Q. All right. Will you turn to that contract and read the same provision?

A. (Reading.) "Admission prices. The exhibitor"—

Mr. Adcock: I wonder if you could give the date of the contract?

The Witness: August 2nd, 1935.

"Admission prices. The Exhibitor, during the whole of this licensed exhibition period of each of the motion pictures exhibited hereunder, agrees to and shall charge for admission to said theatre the following prices: Evening, adults 25 cents, balcony 25 cents, children 10 cents. Matinee, adults, orchestra 15 cents, balcony 15 cents, children 10 cents. Unless a greater minimum admission charge is hereunder specified, the exhibitor agrees to 306 and shall charge for admission at said theatre, during the whole of the licensed exhibition period of each of the motion pictures, an actual admission fee which shall not be less than fifteen cents for each adult person for each matinee performance, and not less than 15 cents for each adult person for evening admission. If during any such period less than said admission prices is charged, the distributor, in addition to all other rights hereunder, shall have the right (a) to immediately terminate the license of motion picture then being exhibited, by written notice to such an effect, to exhibitor, and that upon giving such notice the license of such motion pictures shall forthwith terminate and revert to the distributor; and (b) provided the exhibitor is granted herein a period of clearance to reduce such period by not to exceed one-half in respect to each of the pictures thereafter deliverable hereunder; or provided no period of clearance is specified in the schedules, to withhold for such period not to exceed 60 days, notice of date when each motion picture thereafter deliverable hereunder

will be available for exhibition by the exhibitor; and as to each such motion picture, the run thereof if any granted the exhibitor shall be deemed revoked, and the ex-
307 hibitor agrees to exhibit each such motion picture after notice of the available date thereof, upon the date or dates determined or provided in clause Fourth hereof."

Mr. McConnell: Q. All right. Did all your other contracts so provide, with Vitagraph?

Mr. O'Brien: You mean those in evidence?

Mr. McConnell: Those in evidence, yes.

The Witness: 1937, 1938 and 1939, 1939 and '40; folder No. 12; they are all the same.

Q. Have you covered all years, now?

A. No; 1941; '40-'41, '41-'42. 1940-'41 was the same, and we bought a complete contract, and 1941-'42 we bought individual pictures, in groups, and the same clause was in the contracts.

Q. You are referring to what folder?

A. 11.

Q. Now, will you refer to Loew's folders? Do you find the clause?

A. Yes, sir.

Q. Will you read it, please?

A. Yes, sir.

(Reading:) "Exhibitor, during the whole of the
308 licensed exhibition period of each of the motion pictures exhibited hereunder, agrees to and shall charge for admission to said Theatre the following prices: Matinee, admission prices per person, children 10, balcony 10, adults 15, adults 25 cents, Sundays and holidays.

"Admission prices commencing—"

It was originally at 6:00 P. M., and it was crossed out, and put in there by pencil, "at 6:30 P. M. Children 10 cents, adults 25 cents. If during any such period less than said respective admission prices is charged, the distributor, in addition to all other rights hereunder, shall have the right to immediately terminate the license of motion picture then being exhibited, by written notice to such effect to exhibitor, and upon giving of such notice the license of such motion picture shall forthwith terminate and revert to the distributor; or (b) provided exhibitor is granted herein a period of clearance to reduce such period not to exceed one-half in respect of each of the motion pictures thereafter deliverable hereunder will be available for exhibition by the

exhibitors, and as to such motion picture, the run thereof, if any, granted the exhibitor, shall be deemed revoked, and the exhibitor agrees to exhibit each such motion picture after notice of available date thereof, upon the date or dates determined as provided in Clause Sixth hereof.

"It is further agreed that during the entire period of the engagement at said theatre of each of the motion pictures licensed hereunder, none of the respective admission prices above set forth shall be reduced without the prior written consent of the distributor, and if any motion pictures licensed hereunder are licensed under a participating basis, that is, if the rental thereof is to be determined in whole or in part upon a percentage of the receipts of said theatre, or any part thereof, the exhibitor shall account to distributor upon the basis of the respective admission prices set forth above for each person admitted to theatre, except for customary and reasonable number of free admissions to bona fide representatives of the press, or in consideration of theatre advertising, at each performance of each of said motion pictures, provided that if at any such performance any of the prices of admission are greater than the respective amounts above set forth, exhibitor shall account to distributor on the basis of such larger amounts; and further agrees that if during the engagement of any of the motion pictures licensed hereunder, any of the respective admission prices above set forth are reduced without prior writing, written consent of the distributor or upon failure or refusal of exhibitor to account to distributor upon the basis herein provided with respect to any one or more of the motion pictures licensed hereunder, on a participating basis, distributor shall have the right to terminate this contract as to all motion pictures not theretofore exhibited hereunder, together with the right of distributor's option to terminate any other exhibition contract between the parties hereto and any exhibition contract entered into between the exhibitor and Metro-Goldwyn-Mayer distributing corporation, and distributor may at its option thereon desire such violations hereof by exhibitor a breach of this entire contract and/or any or all such other contracts, entitling distributor to recover from exhibitor as damages therefor the amounts payable as license fees in respect of all motion pictures not theretofore exhibited and paid for pursuant to the protection of this contract, and if and/or such other contracts,

It is understood and agreed that such rights shall be
311 in addition to any and all other rights and remedies granted to distributors in this agreement and without prejudice to all other rights and remedies of the distributors, at law or equity."

Q. Is that provision in all of your contracts, or that distributor?

Mr. Seeley: If the Court please, Mr. McConnell and I have agreed that we can clarify the record a little bit with respect to Metro-Goldwyn-Mayer Distributing Corporation, which is a party to one of these contracts.

The facts are that up until I believe some time in 1937, Metro-Goldwyn-Mayer Distributing Corporation was a subsidiary of Loew's, Incorporated, and distributed the films which were produced for Loew's. Then at that time Loew's took over the business of Metro-Goldwyn-Mayer Distributing Corporation, and it has been continued under the name of Loew's, although for advertising purposes, and you still will see pictures referred to as Metro-Goldwyn-Mayer pictures, sometimes.

The Court: Is that agreeable to you, Mr. McConnell?

Mr. McConnell: Yes, your Honor.

The Court: His statement may be accepted as a
312 stipulation concerning that fact.

A. Well, the 1935-'36, and '37 folder, No. 16, the clause was the same. In the 1937-'38, '38-'39, '39-'40, the clause was changed.

Mr. McConnell: All right. Will you note the change that was made, if you can?

A. Well, the only change was—there is just a smaller form. It don't say anything about penalties. It just says the exhibitor may have a license—

Mr. Adcock: I move to strike the witness's statement as to penalties, as characterizing the form of contract.

The Court: He doesn't want you to use the word "penalty". Use some other word, if you can.

The Witness: Well, then the only thing is that it is just condensed down to a smaller form. Here is the form: Exhibitor, during the whole exhibition period of each of said feature motion pictures, agrees to charge for admission to said theatre the following prices."

Mr. Adcock: There is no need, your Honor, to read the whole thing.

The Court: He doesn't want you to use that word.

The Witness: Well, it says: Orchestra, children,
313 matinee, 10 cents, balcony 10 cents, adults 15 cents, children, evenings—

Mr. McConnell: Q. Those pictures are the same, aren't they?

A. That is right, sir.

Q. All right. What difference is there?

A. Just that they had nothing in there about the clause that if you did not abide by the prices that they had entered into, what the charges would be—what would happen.

Q. Well, isn't that provision on the back of the contract?

A. It may be on the back, but it was not in the same position it was before.

Q. Look on the back of the contract.

A. Yes. The 14th clause.

Q. Is that the same that,—the same as the one that you previously read?

A. Yes.

Q. So that your answer is that they are all the same?

A. That is right, sir.

Q. Now, that takes care of all your Loew's contracts, does it? It does or does not? Does that take care of your Loew's contracts now?

314 A. Yes, sir.

Q. What folders have you referred to, Mr. Salkin?

A. What folders?

Q. The numbers?

A. Nos. 16, 17 and 18.

315 Q. All right. Now, will you turn to your Paramount contracts?

A. Folder number 22, Paramount, for the season of 1936 to 1937.

Q. Will you read that provision?

A. "The Exhibitor agrees to charge minimum admission prices per person to said theatre on the respective exhibition dates thereof and the motion pictures licensed hereunder as follows: Evening, after 6:30, adults, orchestra 25 cents, matinees below 6:30, orchestra 15 cents; children, orchestra 10 in the evening and children, orchestra 10 on the matinee.

"If, during any such period, less than said admission price is charged, the Distributor, in addition to all other rights hereunder, shall have the right to immediately terminate the license of motion pictures then being exhibited and/or all of the remaining motion pictures not there-

tofore exhibited hereunder, by written notice to such effect to the Exhibitor, and upon the giving of such notice the license of such motion picture and/or such motion pictures shall forthwith terminate and revert to the Distributor 316 and the Distributor may, at its option, declare such failure or refusal a breach of the entire contract, entitling the Distributor to recover from the Exhibitor as damages therefor the license fees payable in respect of all motion pictures not theretofore exhibited hereunder, or provided the Exhibitor is granted a period herein to reduce such period by not to exceed one-half in respect of each of the motion pictures thereafter deliverable hereunder, or, provided no period of clearance is specified in the Schedule, to withhold for a period of not to exceed sixty days notice of the date when each motion picture thereafter available hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the run thereof, if any, granted the Exhibitor shall be deemed revoked, and the Exhibitor agrees to exhibit each such motion picture, after notice of the available date thereof, upon the date or dates determined as provided in Clause Sixth hereof, and the license fee of any such motion picture shall be computed, either in whole or in part, upon a percent- 317 age of the gross admission receipts of said theatre; then the Exhibitor shall account to the Distributor for all admissions to its theatre during the exhibition of such motion pictures upon the basis of said admission prices specified above.

"It is expressly understood and agreed that the above minimum admission prices are exclusive of any State, Federal or local tax which is now or may be imposed upon admission to the theatre or theatres licensed hereunder."

Mr. McConnell: Q. Now, will you look through your folders and see if they are the same in all the contracts?

Mr. Adcock: I wonder if, before you do that, you would give me the date of the contract.

The Witness: This contract? December 4, 1936.

In folder 14, for the period of 1937-38, 1938-39, 1939 and 1940, the clause is the same.

Mr. McConnell: Q. You have given the folder numbers?

A. Yes, sir.

Q. All right. Now you have one more,—Twentieth Century-Fox.

The Witness: Wait. I have one more folder to go

through, folder 15, for Paramount, in 1941, 1941-42.

317 Mr. McConnell: All right, go through that.

The Witness: For 1940-41 the clause was the same and there was a year's output of product in there; for 1941-42 we were buying in groups of pictures and the clause was the same. The folder number is 15.

Mr. McConnell: Let me have the 1941-42 folder, will you please?

(Document handed to counsel.)

Q. Did you refer to that by exhibit number,—1941 and '42 product?

A. Yes sir.

For 1935-36, Fox-Twentieth Century:

"The Exhibitor, during the whole of the license exhibition period of each of the photoplays exhibited hereunder agrees to and shall charge admission, per person, at the said theatre, the following prices: After 6:30 P.M., evening, adults, orchestra, 25 cents, children 10 cents; until 6:30 matinees, adults, orchestra 15 cents, children 10 cents.

"If during any such period less than said admission price is charged, the Distributor, in addition to all other rights hereunder, shall have the right (a) to immediately terminate the license of the photoplay then being ex-

318 hibited, by written notice to such effect to the Exhibitor, and upon the giving of such notice the license of such photoplay shall forthwith terminate and revert to the Distributor, or, provided the Exhibitor is granted a period of clearance, to reduce such period by not to exceed one-half in respect to each of the photoplays thereafter deliverable hereunder, or, provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty days notice of the date when each photoplay thereafter deliverable hereunder will be available for exhibition by the Exhibitor, and as to each such photoplay the run thereof, if any, granted the Exhibitor shall be deemed revoked and the Exhibitor agrees to exhibit each such photoplay after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof. If the Distributor does not elect to terminate the license of the photoplay then being exhibited, as provided in Clause (a) in this paragraph, the Exhibitor shall account for all admissions at said theatre during the exhibition of such photoplay upon the basis of the prices hereinabove stipulated."

319 Mr. McConnell: Q. Does that clause appear in all the contracts of the company?

The Witness: A. This is in folder 24, for 1935-36, 1936-37.

In folder 25, 1937-38, 1938-39, 1939 and 1940 were the same.

In 1940-41, where we had a contract for the full season's output, the same clause was in there, and on the group buying of five pictures there was such a small setup of the admission prices, outside of "How Green Was My Valley," which specified the same clause as my yearly contracts, but in all other contracts of five pictures they just had a small clause,—Admission Prices: After 6:30, adults, orchestra, 25 cents; children, orchestra, 10; up to 6:30 P.M., matinees, adults 15 cents, children, orchestra, 10. "It is expressly agreed between the parties hereto that all provisions of certain license agreements between them dated October 21, 1941, are hereby incorporated and made a part of this agreement, except specific provision relating to the identity license fees and playing terms and arrangements of the photoplay thereunder licensed, except the ad-
320 mission prices to be charged." This was taken off the original master contract.

Mr. McConnell: Q. Is there a printed portion on the back of the master contract?

A. Yes. Not on the 5-picture groups, no sir. It said it was part of the contract of October 21, 1941.

All these contracts revert to the contract of October 21, 1941, and the only contract I find is a short subject contract of that date.

Q. You don't find a master contract of that date?

A. No sir.

Q. All right. What is that date?

A. October the 21st, 1941.

Q. All right. Have you finished all your folders now? What was the last one you referred to,—the exhibit?

A. Number 20—it is either 23 or 28, I can't make out what it is. It is either 23 or 28.

Mr. McConnell (examining exhibit): Exhibit 23.

Q. Now, those clauses that you have referred to are printed portions of the contract, are they not?

A. Yes, sir.

Q. And did you have anything to do with the preparation of that portion of the contract?

A. No sir.

321 Q. That was in the contract when it was tendered you for signature?

A. Right.

Q. In the operation of a moving picture house, Mr. Salkin, does your operating expense, your overhead expense, increase with the increase in admissions?

A. No sir. It costs as much to operate for a hundred people as it does for a thousand people. It is a set expense.

Mr. McConnell: You may cross-examine.

The Court: Suppose we take a recess for ten minutes before you start, and you can perhaps assemble matters better.

(A recess was accordingly taken.)

322 The Court: Have you finished with your direct examination?

Mr. McConnell: Yes, your Honor, except for that offer of proof.

The Court: Well, we will take that up at the conclusion.

Cross-Examination by Mr. Seeley.

Q. Mr. Salkin, yesterday, you testified to some conversations which you had in 1928 with Mr. Loeb, a salesman for Fox and salesman for some of the other companies. Did you have similar conversations with salesmen for the different distributors again in 1929?

A. Yes.

Q. And in each year thereafter up to 1936 and '37?

A. Right, sir.

Q. They may be different salesmen from time to time?

A. Yes, there was different salesmen.

Q. But you had those same conversations or similar conversations with salesmen for each of the companies during that whole period, is that right?

323 A. Right, sir.

Q. In talking with these different salesmen, what playing position for the Jackson Park Theatre were you requesting?

A. Better than first week playing position, C week.

Q. C week you were requesting?

A. Yes, sir.

Q. That is the same playing position which the Jeffery and the Maryland have, is it not?

A. Yes, sir.

Q. When you became the manager of the Jackson Park Theatre in 1927 its playing position under the contracts it had then was what?

A. First week, sir.

Q. Is that the same playing position that it had in 1942 when the suit was filed?

A. Yes, sir.

Q. And it has remained the same, has it, throughout the intervening years?

A. Right, sir.

Q. When you became the manager of Jackson Park in 1927, what was the playing position of the Jackson Theatre?

A. C week.

324 Q. Who then operated the Jeffery Theatre?

A. Cooney Brothers, National Theatres.

Q. And it was about 1930, was it not, that Warner Bros. acquired the theatre?

A. In 1930, yes, sir.

Q. And after Warner Bros. acquired the theatre was its playing position changed?

A. No, sir.

Q. It still is a C week house, is it not?

A. Yes, sir.

Q. In 1927, when you became manager of the Jackson Park, what was the playing position of the Grove Theatre?

A. The Grove Theatre? C week.

Q. Who then operated the Grove Theatre?

A. I am not sure if L. & T. or National Theatres operated it.

Q. Either Lubliner & Trinz or National Theatres?

A. That is right.

Q. And that was not acquired by Warner Bros. until 1930?

A. Right, sir.

Q. After it was acquired by Warner Bros. was the playing position of that theatre changed?

325 A. No, sir.

Q. It still is a C week house?

A. Yes, sir.

Q. When you became manager of the Jackson Park in 1927 what position did the Maryland Theatre play?

A. C week.

Q. Who then operated the Maryland Theatre?
A. Balaban & Katz.
Q. Are you sure of that?
A. No.
Q. It might have been that Balaban & Katz did not acquire that theatre until September of 1928, mightn't it?
A. I know the theatre was closed and I think you are right—I think Balaban & Katz acquired it.
Q. Has the playing position of that theatre been changed since you have been at the Jackson Park?
A. No, sir.
Q. It is still a C week house?
A. Right, sir.
Q. That Maryland Theatre was at one time known as the Woodlawn, wasn't it?
A. Yes, sir.
Q. And that is not to be confused with a smaller theatre now on the south side which is now called the
326 Woodlawn?
A. That is right, sir.
Q. The new Woodlawn has been built since the old Woodlawn changed its name to the Maryland, is that right?
A. Yes, sir.
Q. In 1927 what was the playing position of the Tower Theatre?
A. Tower Theatre was playing clear product of the Tivoli first run.
Q. In what week would that be? A week?
A. A week, sir.
Q. And who operated it then?
A. L. & T., I think.
Q. Lubliner & Trinz?
A. Yes, sir.
Q. And that theatre was acquired by Balaban & Katz in 1928, was it not?
A. I think you are right, sir.
Q. When Balaban & Katz acquired the theatre in what playing position did it play?
A. It still continued in A. I don't know what time it changed into B. It went from an A to a B theatre.
Q. Under Balaban & Katz's management it moved back from A to B, is that right?
327 A. Yes, sir.

Q. And it played B week?
A. Yes, sir.
Q. In 1927 what was the playing position of the Avalon Theatre?
A. It played first run clear product of the Tivoli.
Q. That is, it played in A week and played with different pictures than the Tivoli?
A. Right.
Q. And who then operated the Avalon Theatre?
A. National Theatres.
Mr. O'Brien: Mr. Salkin, would you mind talking a little louder?
The Witness: Yes, sir.
Mr. O'Brien: I can hear you but I am afraid some of the gentlemen cannot hear you.
A. Yes, sir.
Mr. Seeley: Q. And that theatre was taken over by Warner Bros. in 1930, wasn't it?
A. Yes, sir.
Q. And that is still an A week theatre, is it not?
A. Yes, sir.
Q. That is, some of the pictures the Avalon plays, it plays in the first A week and those pictures are not
328 played in the Tivoli?
A. That is right, sir.
Q. Other pictures the Tivoli plays in the first A week and some of them are repeated in second A week at the Avalon, is that correct?
A. Right, sir.
Q. The product of RKO is one of those which the Avalon plays clear of the Tivoli, is that right?
A. Yes, sir.
Q. And the product of Twentieth Century-Fox and of Loew's are among the product which the Avalon has the first run on?
A. Yes, sir.
Q. When you became the manager of the Jackson Park Theatre in 1927, where did the Hamilton Theatre play?
A. Second week of general release.
Q. That was the run following the run of the Jackson Park Theatre?
A. Yes, sir.
Q. Who then operated the Hamilton Theatre?
A. Mr. Schwartz.

Q. That theatre was later acquired, in 1930, by Warner Bros., wasn't it?

329 A. Yes, sir.

Q. When you took over the management of the Jackson Park Theatre it had a provision in each of its contracts with distributors whereby it had clearance over the Hamilton, didn't it?

A. Yes, sir.

Q. That is, the contracts of the Jackson Park provided that the Hamilton should not play until second week?

A. Right, sir.

Q. After Warner Bros. took over the Hamilton Theatre, was that clearance taken away from the Jackson Park Theatre?

A. No, sir.

Q. All of its contracts since that time have given it clearance over Warner Bros. Hamilton, is that right?

A. Yes, sir.

Q. Now you gave us this morning, when you described some of the theatres out there and their neighborhoods, the seating capacities of some of them. I would like to get the seating capacities of the others. The Grove, for instance, am I right that that is about 1800 seats?

330 A. Yes, sir.

Q. And the Avalon is about 2400 seats, is it not?

A. Yes, sir.

Q. And the Tower is about 3000 seats?

A Yes, sir.

Q. And the Tivoli is about 3400 seats?

A. Yes, sir.

Q. Going back again, for a moment, to the Hamilton Theatre, I believe you said that there was a period beginning in 1940 when you were asked by Warner Bros. for permission to let the Hamilton move up into first week with the Jackson Park, and that you consented to that for a time; is that right?

A. Yes, sir.

Q. And you consented to that on the understanding that Warner Bros. would try to move the Jeffery up to B week and would try to help you move the Jackson Park up to C week, is that right?

A. Right.

Q. And then when you learned that Warner Bros. would

be unable to do that, because Balaban & Katz would not waive its clearance over the Jeffery, you demanded of each of the distributors that the Hamilton be put back into second week, didn't you?

A. No. I demanded that they live up to my contracts, which specified where Hamilton played.

331 Q. That is to say, even while the Hamilton was playing in first week you still had the right under your contracts to put it back into second week, is that right?

A. Yes, sir.

Q. And what you did was to notify each of the distributors that you were no longer waiving that contract but were from then on insisting on it, is that right?

A. Yes, sir.

Mr. Seeley: Mr. McConnell, have you carbon copies of those letters which we have previously seen which were distributed, sent to eleven distributors?

Mr. McConnell: I haven't got them here, but Mr. Adcock has them, I know.

Mr. Seeley: Have you, Mr. Adcock?

Mr. Adcock: No, I have not. They are Defendants' Exhibits 4 and 4-A to 4-K.

Mr. Seeley: Well, we can get along without them today. We will try and find them tonight.

Q. At any rate, is it not true that you sent identical letters to eleven distributors, including the five distributors who are defendants here?

332 A. Yes, sir.

Q. And did each one of those distributors accede to the request which you made in that letter?

A. Yes, sir.

Q. Was there any conspiracy involved in that?

A. Was there any conspiracy involved?

Q. Were you in a conspiracy with those distributors at that time?

A. No, sir.

Mr. McConnell: Oh, I object to that, if the Court please. That is argumentative.

The Court: Well, he said he was not. That answers it.

Mr. Seeley: Q. And when the next buying season came around you again negotiated with each distributor for clearance over the Hamilton, didn't you?

A. No, they just put it in my contracts, the same contracts I had previously had. They wrote it up the same.

Q. You did not have to ask for it, is that right?

A. No, sir.

Q. But at the time when the Hamilton was playing in first week you felt that that was hurting the business of the Jackson Park Theatre, didn't you?

A. Yes, it was hurting it more than helping it.

333 Mr. McConnell: Speak up a little louder, please, Mr. Salkin.

Mr. O'Brien: What was the answer?

Mr. Adcock: What was that?

(Answer read.)

Mr. Seeley: Q. That is, the Jackson Park and the Hamilton were in competition for patronage, were they not?

A. Yes, sir.

Q. And if the two theatres played the same picture week and week, then they had to divide what patronage they could get in that run, is that right?

A. Yes, sir.

Q. Whereas, if you had the run ahead of the Hamilton, then you were able to get more people to see the attraction at the Jackson Park, is that right?

A. Yes, sir.

Q. Now, that matter of the time when you played the pictures and the time when the Hamilton Theatre played the pictures is what we mean in this case when we talk of run and clearance, isn't it?

A. Yes, sir.

Q. And the importance of run and clearance is due
334 to the fact, isn't it, that when two theatres are in competition they take away from each other more or less patronage, depending on the runs they play in?

A. Yes, sir.

Q. And you have testified, I believe, that the Jackson Park Theatre is in competition with the Maryland Theatre?

A. Yes, sir.

Q. And then if the Jackson Park Theatre were moved up into C week alongside of the Maryland Theatre, you would expect to take the patronage away from the Maryland Theatre, wouldn't you?

A. Yes, sir.

Q. And the right to play in that earlier period of release would therefore be worth more money to you, wouldn't it?

A. Yes, sir.

Q. And the Maryland Theatre's right to play in that week would be worth less money to it, wouldn't it?

A. With me playing with them?

Q. Yes, sir.

A. Yes, sir.

Q. And the same thing would be true as between the Jackson Park and the Jeffery, if you both played in
335 C-week, is that right?

A. Yes, sir.

Q. And the same thing would be true as between the Jackson Park and the Grove if you both played in C week?

A. Yes, sir.

Q. In other words, the more theatres play simultaneously in the same run, the less valuable the right to play in that run is to any one of those theatres, is that right?

A. Except the theatre is not playing it.

Q. I say if the theatres play in the same run.

A. Yes.

Q. You understand my question?

A. Yes, sir.

Mr. Seeley: Just answer my questions, please.

Q. When you negotiate for the Jackson Park Theatre for films, you negotiate separately with each distributor, don't you?

A. Yes, sir.

Q. And, in the process of those negotiations, you argue or bargain with each distributor about the film rental, is that right?

A. Yes, sir.

Q. Now, I suppose that one of the things that deter-
336 mines in your mind what you are willing to pay for a license is the quality of the pictures which the distributor has to offer, is that right?

A. Yes, sir.

Q. And the distributor, when he offers you a block of pictures, they are not all of the same value, are they?

A. No, sir.

Q. So that it becomes a question of putting a price on those which are considered best and those which are considered not quite so good, and so on, is that right?

A. Yes, sir.

Q. And isn't it also true that one of the things which

you pay for in license fees when you make a contract, is the right to play those pictures in a particular playing position?

A. Yes, sir.

Q. And isn't it also true that one of the things that you pay for, when you acquire the right to play those pictures in a particular position, is whatever exclusiveness you can bargain for in that position?

A. Yes, sir.

337 Q. The more exclusive your right is, the more valuable it is to you as a distributor, is that right?

A. As an exhibitor.

Q. I beg pardon—as an exhibitor?

A. Yes, sir.

Q. And, if you can get clearance over some other theatre, that increases the exclusiveness of your right and protect it, does it not?

A. Yes, sir.

Q. And that clearance is part of what you pay for in license fees?

A. Right, sir.

Q. Now, going back to the varying qualities of these pictures, you testified the other day, yesterday, that under single feature operation there were more pictures available to the Jackson Park which had not been played in prior runs than there had been under double feature policy. That is true, isn't it?

A. Yes, sir.

Q. And that was because out of all the films available the prior run theatres cannot use them all and they only played some of them?

A. They played half what they are playing at the
338 present time.

Q. Yes. Now the pictures which those prior run exhibitors did play were the best ones, weren't they?

A. In most cases, yes.

Q. Generally speaking?

A. Yes, sir.

Q. Those that had the greatest box office value?

A. Yes, sir.

Q. And the ones which they passed conversely would be the ones which had the least box office value?

A. Yes, sir, from their point of view.

Mr. McConnell: Speak up a little louder, Mr. Salkin, will you?

The Witness: A. Yes, sir.

Mr. Seeley: Q. Then, when you came to license pictures for the Jackson Park Theatre, which did you pay the higher license fees for, the best pictures that you knew would be played in the prior run theatres or the other pictures that might not be played in the prior run pictures?

A. For a period of years the better pictures that played at the Tower Theatre I bought at a reduction, because the theatre had played them and they played in them bigger theatres, and the smaller pictures I pos-
339 sibly paid as much as I did for the bigger pictures because they were clear of them then.

Q. You say "possibly." Do you say now it is a fact that you did?

A. Yes.

Q. Did you generally pay the same price, then, for all the pictures you bought?

A. No, sir, all the pictures that played the Tower Theatre I bought at a reduction.

Q. How about those that played the Tivoli and Avalon?

A. No, the Tower was the closest house.

Q. Just the Tower?

A. That is the only house.

Q. The ones that played in the Tower are the only ones you got any reduction on?

A. Right, sir.

Q. At the present time what admission price does the Jackson Park Theatre charge?

A. Twenty cents for matinee and thirty for evening.

Q. Thirty cents evening adults admission charge?

A. Yes, sir.

Q. How long has it been charging that?

A. Quite a number of years now.

Q. And in all these contracts which you testified
340 from or read from the stipulated minimum price was 25 cents, was it not?

A. Yes, sir.

Q. And you have been charging 30 cents, not because the contracts required you to do so, but because you wanted to?

A. No. I was always trying to better my playing position. I wanted to be in position where if I ever got a

C week release I would be charging C week admission prices. I could not go below 25 cents.

Q. And you did not go below 25 cents?

A. No, sir.

Q. And you did charge 30 cents?

A. Yes, sir.

Q. And the distributors did not require you to do that, did they?

A. No.

Q. About how many years have you been charging 30 cents there?

A. About four years.

Q. About four. Isn't it a fact that that dates back as far as 1935?

A. No, we were charging 27—yes, when the tax
341 came in we went to—

Q. Have you any way by which you can fix in your mind now what date it was?

A. No. You have all my records. I have no records to check with. You have taken all the records of all my admission prices.

Mr. Seeley: All right, if you will tell me after Court adjourns what record we can find that information in, I will try to dig it out.

The Witness: In my daily book of receipts it lists all the amounts of admissions. You have had them books now for practically two months that I have not had no—

Mr. Seeley: Q. About what is the seating capacity of the Hamilton Theatre?

A. Less than 1000.

Q. Less than 1000?

A. Yes, sir.

342 Q. And when was this new Woodlawn Theatre opened?

A. About four years ago.

Q. And what is the capacity of that theatre?

A. Less than 400 seats.

Q. It is a very small theatre?

A. Yes.

Q. Since it opened, have you had clearance over it in the Jackson Park contracts?

A. I think in some of them there has been clearance.

Q. Was that not because you thought that a new theatre coming into your territory, might take away some business from the Jackson Park?

A. No, sir.
Q. Was that not the reason?
A. No, sir.
Q. Do you recall giving a deposition in Mr. Adcock's office on November 12, 1943?
A. Yes, sir.
Q. And you testified then under oath, didn't you?
A. Yes, sir.
Q. Is it not a fact that this question was put to you:
"Q. But considering the position of your theatre, that is, the type of theatre and the location of the theatre,
343 you thought you were entitled to clearance over the new Woodlawn, did you not?"
And did you not answer:
"I thought any new theatre coming into my territory might take people away from me."
Was that question put to you and did you make that answer?
The Witness: A. I must have, sir.
Q. Now, I will ask you to look in the books marked Plaintiffs' Exhibit 8 for identification, and see if you can refresh your recollection as to the time you began charging 30 cents at the Jackson Park Theatre.
A. On November 10th, on Sundays.
Q. On Sundays?
A. Yes, sir.
Q. Could you quickly find out when you began charging it on week-days. If it is going to take too long, I would rather you would look it up after court.
A. It won't take so long. Sundays and holidays,—it is not in this book, sir.
Mr. Seeley: We will get the other book and look at it later.
A. Yes.
344 The Tivoli and Avalon, and Tower and Grove and the Woodlawn and Jeffery are all located within a radius of about two miles of the Jackson Park, are they not?
A. Yes, sir.
Q. Is the Hamilton located in that same radius?
A. Yes, sir.
Q. And the new Woodlawn?
A. Yes, sir.
Q. So that all those theatres are competing for the

patronage of the same people, or some of the same people, are they not?

A. Right, sir.

Q. This competition exists between any two theatres, does it not, if they are so located that they are in position to draw patronage out of the same territory?

A. Yes, sir.

Q. And the first run theatres in the Chicago Loop are in position and do draw from all over the city of Chicago, is that not right?

A. Yes, sir.

Q. So Jackson Park is in competition with those theatres?

A. Yes, sir.

Q. For about how many years were you a film salesman?

345 A. About 19—I was a junior salesman in 1917, until about 1927, until I went to Jackson Park. There was a period in there where I owned my own theatre and worked for Ascher Bros. as manager.

Q. About how many years were you a film salesman?

A. About nine years.

Q. For several different companies?

A. Yes, sir.

Q. When you were selling film, you would go about it, would you not, by approaching first the bigger theatres in the territory in which you were selling?

Mr. McConnell: I object to that: There is no showing that this witness has sold the biggest theatres.

Mr. Seeley: All right. I withdraw the question.

Q. In the territory in which you sold film, were all the theatres the same size?

A. No, sir.

Q. Some were larger than others?

A. Yes, sir.

Q Is it not a fact that, when starting out to sell films, you approached the biggest theatres first?

A. The circuits were sold by the office, the manager of the local office.

Q. But the theatres, you sold?

346 A. The theatres I sold, yes. We went out and got their prices and what they would pay. I attempted to sell our attraction to the theatre that would pay the most.

Q. You went to the biggest theatres first, because you

figured they could afford to pay a better price and it was only logical to sell first to the bidder that would pay the most money, is that right?

Mr. McConnell: I object to that. The witness has testified that he did not sell the larger theatres; that they were sold through the office of the company.

Mr. Seeley: I do not say the largest,—the larger; some larger and some smaller.

The Court: Not the largest; the larger of the group to which he sold.

Mr. Seeley: That is right.

The Court: He may answer.

Mr. Seeley: Do you want the question reread?

The Witness: A. Yes, sir.

(Last question read by reporter.)

A. I attempted to sell them, but in a lot of instances, I sold the smaller in preference to the big theatres, where I received more money at the small theatre;
347 so I have had occasions where I sold the small theatre first.

Mr. Seeley: Q. But is it not a fact that you generally went first to the larger theatres that you sold, because you figured they could pay a better price, and it was only logical to sell them first?

A. I went to the kind I thought would pay the price, the most money, in territory, small or large. I wanted to get the most money I could out of the territory for my pictures.

Q. Then when you went to a theatre which you thought was a secondary theatre, you told them that a more important customer had already bought a prior run of your film?

A. If they had been sold.

Q. Yes. In other words, you tried to work from the top down, seeing your best customers first?

A. Well, as I said before, I tried to sell the one I thought I could get the most money out of.

Q. That is right. That is what I meant by saying "from the top down." You attempted to sell the biggest paying accounts first, and from there on, down the line?

A. Yes, sir.

Mr. Adcock: Was there an answer?

348 The Witness: Yes, sir.

Mr. Seeley: Q. With reference to the period of

time when you had Bank Night and Screeno at the Jackson Park Theatre, those games began in 1935 sometime, did they not, and continued until about the end of 1936?

A. Right, sir.

Q. And this Bank Night consisted in general of having a cash prize for which the patrons of the theatre would draw tickets, is that right?

A. Yes, sir.

Q. And some nights those cash prizes were as much as $100, were they not?

A. Yes, sir.

Q. And Bank Night and Screeno were big attractions in the Jackson Park Theatre and any other theatres, were they not?

A. Yes, sir.

Mr. Adcock: I could not hear that answer.

A. Yes, sir.

Mr. Seeley: Q. And then, going on from 1936 into 1937, you started double featuring in the Jackson Park, about February, 1937?

A. Right, sir.

349 Q. You have had contracts for film with various distributors?

A. Yes, sir.

Q. Did any of those contracts require you to go to double features?

A. No, sir.

Q. Did any distributor force you to go to double features?

A. No, sir.

Q. You went to double features because you were in competition with other houses that had already gone to double features?

A. Right, sir.

Q. When was it that Jackson Park showed triple features?

A. If my mind is right, in '42.

Q. Was it for the whole year?

A. No, it wasn't.

Q. How long was it?

A. About eight months, just one change, small pictures.

Q. You changed the program three times a week?

A. Yes, sir.

Q. On one change, you had two pictures?

A. That is right.

Q. And on the other change, you had three pictures?

A. That is right.

350 Q. Were any of the Balaban & Katz houses with which you were in competition, showing triple features?

A. None that I was in competition with. Balaban & Katz theatres were running them at the Biltmore and Crystal Theatres.

Q. But not any of those that were in your immediate neighborhood?

A. No, sir.

Q. How about the Warner Bros. theatre in your competitive neighborhood?

A. No, sir.

Mr. O'Brien: What do you mean by "No, sir"?

A. There was none running.

Mr. Seeley: Q. Was there anything in the contract you had with any distributor, that required you to show triple features?

A. No, sir.

Q. Did any distributor compel you to show triple features?

A. No, sir.

Q. You mentioned yesterday, having bought pictures or licensed pictures for the Jackson Park for a time through Floyd Brockell circuit. Will you tell us 351 what that is?

A. Floyd Brockell got a group of men together and tried to help them in the buying of motion pictures.

Q. What business were those men in?

A. The men he got together?

Q. Yes.

A. Theatre operators.

Q. A group of theatre operators?

A. That is right. Floyd Brockell, with his knowledge, had been an executive of film companies that worked for Balaban & Katz. I thought he had more knowledge than I, and I left it up to him.

Mr. Adcock: I could not hear that.

Mr. Seeley: He said he thought Floyd Brockell had more knowledge than he, and he left it up to him.

Q. Then Mr. Brockell's business was to act as the buy-

ing agent for a group of independent exhibitors, is that right?

A. That is right.

Q. How many theatres did he buy for?

A. Oh, I imagine Floyd Brockell had about fifty theatres.

Mr. Adcock: How many?

352 Mr. O'Brien: Fifty.

Mr. Seeley: Q. Now, besides being known as the Brockell Circuit, was his business also known sometimes as Midwest Theatres?

A. Yes, sir.

Q. It was the same thing?

A. Yes, sir.

Q. What is the Allied Theatres to which you have referred?

A. The Allied Theatres is an organization of independent theatre owners that was formed in 1929, for all things involved in our business, except motion pictures.

Mr. Seeley: I did not get that.

A. Except motion picture buying. They never did any buying when they organized in 1929. In 1936, or '35, when Mr. Brockell, was killed, Mr. Mager, a former employee of Midwest, came over to Allied and took over the booking, not the buying.

Q. At a later time, did Allied Theatres begin buying for some members?

A. To the extent of buying for all the members?

Q. No, for any of the members.

A. They gave cooperation to the office. They did not start buying as a circuit until 1942.

353 Q. It was in 1942 that Allied Theatres started to buy for some of their members as a circuit?

A. That is right.

Q. And was Jackson Park Theatre one of the theatres for which Allied bought?

A. Yes, sir.

Q. From what distributors other than the distributors, the five of them who are defendants here, has the Jackson Park Theatre licensed products from 1936 to 1942?

A. Columbia, United Artists, Universal, Republic, Monogram—I think that is all, sir.

Q. Is any of those distributors, so far as you know, connected in any way with any of the defendants in this case?

A. None that I know of, sir.

Q. And each of those distributors, like the defendant distributors, has also licensed Jackson Park Theatre to play in first week general release, have they not?

A. Yes, sir.

Q. This morning you testified to some facts regarding various theatres out there on the South Side,—oh, from 1916 when the Jackson Park Theatre was built, up
354 until 1927, when you became its manager. Prior to so testifying, what, if any, investigation had you made as to the times when those theatres were opened and the playing positions which they had back in those days?

A. Just my own knowledge.

Q. You were depending on your recollection, is that right?

A. That is right, sir.

Q. And in giving dates as to when they were built, you were relying on your recollection?

A. Right, sir.

Q. In some cases, the occurrences were more than twenty years ago?

A. Right, sir.

Q. And in stating to the jury what priorities of run those theatres had, what clearance they had, you were likewise relying on your recollection, were you not?

A. Yes, sir.

Q. When you testified that in 1917, Jackson Park played pictures first run on the South Side, did you mean by that, all the pictures which it played had first run, on the South Side?

355 A. The whole South Side?

Q. No, in its neighborhood.

A. Yes.

Q. That is your recollection?

A. Yes, sir.

Q. Well, would you say that it is not a fact that in the last four months of 1916, Jackson Park and Hamilton Theatres played the same picture? That Jackson Park played one first, and then Hamilton Theatre played it? Or would you say that is a fact?

A. No, sir.

Q. Would you say it is not a fact that out of ten pictures played by both the Hamilton and the Kimbark Theatres, Kimbark played all of them during that period?

A. Ahead of the Hamilton?
Q. Beg pardon,—Jackson Park.
A. Ahead of Jackson Park?
Q. Yes.
A. I imagine that was possible. Jackson Park played repeats on the Kimbark.
Q. Yes?
A. I can't answer you.
Q. You would not say that did not happen?
A. No, sir.
Q. May it not be that your recollection is faulty when you say that Jackson Park played all its pictures
356 first run on the South Side back in those days?
A. According to what you are showing me, yes. You have all those things ahead of you. I have not,—back in those days.
Q. You have a good recollection for dates, have you not, or not very good?
A. No, sir.
Q. So when you testified the Tivoli was opened in 1919, that could have been 1920?
A. Yes, sir.
Q. As a matter of fact, it was 1920, wasn't it?
A. You have all the records there. I have not. You asked me where I got those records. I am just telling you what I know or think.
Q. As you recall it, the Woodlawn was opened in 1920. That could have been 1918?
A. Yes, sir.
Q. That was the old Woodlawn, when it opened?
A. Yes, sir.
Q. When you testified the Woodlawn at that time played its pictures,—I don't think I remember what you testified to. As you recall it, how were pictures played as between the old Woodlawn and Jackson Park Theatres back
357 there in 1918, 1919, 1920, '21 and '22?
A. The only information is, I had a brother operating the Jackson Park Theatre. He had protection clearance of the Woodlawn, and Andrew Karzas, and Mr. Coston at that time was involved with Karzas, asked me to give Woodlawn Theatre some of the protection.
Q. When was that?
A. Well, my brother was with Jackson Park from 1917 until about 1922, and I know that the Jackson—

Q. Just a minute. I can't read and listen to you at the same time. I will let you finish your answer to the question. Have you a further answer to the same question?

A. No, sir.

Q. Would you say definitely it is not a fact that, after 1920, Woodlawn always played ahead of Jackson Park?

A. Would I say definitely?

Q. Yes.

A. No. If you have it definitely in front of you, I might be wrong.

Q. That might be true?

A. All I am going with is by my brother.

Q. You are just testifying what your brother told 358 you?

A. In our conversations, that is right, sir.

Q. Your own recollection is pretty hazy, is it?

A. Well, twenty-four years ago, yes, sir. You have the actual records there. I have only got what I remember.

Q. Well, now, the Jeffery Theatre was built in—

Mr. McConnell: I object to his reading from something not in evidence. I don't know what his records are or what he is reading from.

Mr. Seeley: I withdraw the question.

Q. Would you say the Jeffery might have been in 1923 instead of 1924?

A. If you have the record there, as to when it was opened, it must have been. I am not getting the record here.

Q. Would you say the Grove might have been opened in 1925 instead of 1928?

A. If your records show it, it must have been.

Q. Would you say it is not a fact that Floyd Brockell died in 1933, instead of 1935 or '36?

A. I think it was in 1933 that he was killed, yes, sir.

Q. So the time when he bought films for you was 359 not in 1936 or 1937, but some time prior thereto?

A. I don't think I said 1937, sir.

Q. You don't think you testified to that?

A. No, sir.

Q. You did testify, did you not, that "How Green Was My Valley" was played by you in 1939?

A. No, sir. It was a later date than 1939.

Q. Oh. What date was it?

A. I don't know offhand. I could tell you by looking at my records.

Q. If I mentioned the date, June of 1942, would that refresh your recollection?

A. It sounds closer to it than 1939.

Q. That was a Fox picture?

A. Yes, sir.

Q. A very big box-office attraction, a good drawing picture?

A. Yes, sir.

Q. It did not play in Warner Bros. houses, did it?

A. No, sir.

Q. It was sold separately as a special, not along with other pictures?

A. Right, sir.

Mr. Seeley: That is all for me. Thank you, Judge.

360 *Cross-Examination by Mr. O'Brien.*

Mr. O'Brien: Mark this Warner Exhibit 1 for identification.

(Said document so marked by reporter.)

Q. Those distributors who are not defendants in this case, do they or any of them own theatres in Chicago?

A. No, sir.

Q. You have employed the Brockell Circuit. How about the Essaness Circuit? Is there such a thing?

A. There is a circuit of theatres in Chicago, run by Spiegel & Stern.

Q. For how long has that been true?

A. I think they got them theatres in around the 30's, the early 30's.

Q. They buy in a group?

A. They buy their theatres.

Q. Yes. The same is true of Schoenstadt theatres?

A. Yes, sir.

Q. Neither one of those or any of the theatres in those groups, is owned by any producer?

A. No, sir, that I know of.

Q. Now, you told us about Lubliner & Trinz circuit back in the early days when it had the Grove and
361 Tower, remember?

A. Yes, sir.

Q. You said it had only those two, is that right?

A. In that section?

Q. Yes.

A. Yes, sir.

Q. Now, Mr. Bloom, when he had the Jackson Park for quite a while he also had the Shore Theatre, did he not?

A. Which Shore?

Q. The Shore.

A. There was a South Shore—

Q. Just The Shore.

A. Yes, sir.

Q. And at one time, he also had the South Shore?

A. Right, sir.

Mr. O'Brien: Mark this Warner Exhibit 2 for identification.

(Said document so marked by reporter.)

Q. And he sold the South Shore, did he not, along about 1923?

A. Yes, sir.

Mr. McConnell: I object, if the Court please, to going into what Edward I. Bloom did with certain other property. It cannot be binding on the plaintiffs.

Mr. O'Brien: You are talking about history and 362 what the circuits were back in the early days, and how the buying was done.

The Court: He may answer.

The Witness: A. Yes, sir.

Mr. O'Brien: Q. He sold it in 1923?

A. I don't know when he sold it, sir.

Q. Now, is the Jackson Park a member of the Allied Theatres of Illinois?

A. Yes, sir.

Q. And was it a member at the time you first became manager?

A. No, sir. There was no Allied.

Q. Did it become a member in 1933 or 1935?

A. No, sir. It was before that time that it became a member. It was one of the original—it was a member when Allied was organized in 1929 or 1930.

Q. And continued to be a member every year since?

A. Yes, sir.

Q. You are an officer of that association, are you not?

A. Yes, sir.

Q. And have been since when?

A. Well, I was on the Board of Directors in 1935, and was elected Secretary and Treasurer in about 1939.

363 Q. Remember Mr. Saperstein?
A. Yes, sir.
Q. Was that originally his company?
He was President, was he not?
A. President, yes, sir.
Q. He acted through the Board of Directors the same as any president of any company?
A. Right, sir.
Q. You told the jury this morning that the National Theatres run by Cooney's acquired the Avalon. Remember that?
A. They built the Avalon.
Q. That is right. They built it, they did not acquire it from anybody, did they?
A. No, sir, they built it.
Q. Will you look at the instrument marked Warner's Exhibit 1 for identification, at the signature next to the last one on page 4, and tell me if that is your signature.
A. Yes, sir.
Q. You made it on behalf of the Jackson Park?
A. Yes, sir.
Q. By the way, Mr. Saperstein was the President of Allied Theatres during all of the year 1935, was he not?
364 A. I think he died in 1936, sir.
Q. He was President for all of the year 1935, preceding his death?
A. I am pretty positive, sir.
Q. When did you tell us that Balaban & Katz commenced double featuring?
A. In 1936. I think it was in October.
Q. In October?
A. 1936.
Q. Was it about the middle of October?
A. I think that is right, sir.
Q. And was that true of certain of their houses out in the Jackson Park area?
A. Jackson Park area?
Q. Such as the Tivoli?
A. Yes, sir.
Q. And the Southtown?
A. I don't know about Southtown, but I am sure it was at the Maryland, the Tower, and Tivoli.
Q. By the way, do you recall when it was that you started to negotiate your deals in the buying season of 1936?

A. No, I don't know when I started negotiating.

Mr. Seeley: Will you try to remember to speak up, please?

A. Yes, sir.

365 Mr. O'Brien: Q. How long before the actual written contract would get signed, did it take to work out the deal, as a rule?

A. Sometimes it took two months, sometimes three months, sometimes five months. The salesmen were calling on us continuously at all times.

Q. I see. After you finally had it worked out, you would enter into a written agreement?

A. Yes, sir.

Q. At all times it was your intention that the written agreement, or the parts which you specified, correctly represented what you had agreed upon? Do you understand the question?

Mr. McConnell: I object to that question, if the Court please.

The Court: Objection sustained.

Mr. O'Brien: All right.

The Court: We will take a recess to 10:30 tomorrow morning.

366 (Whereupon the following proceedings were had outside the presence of the jury:)

Mr. McConnell: There was a question asked the witness as to whether or not, if he was granted a C week playing position with the Maryland Theatre, that the admissions in the Jackson Park Theatre would be as large as those shown in the exhibit which was shown to him, specifying the admissions in the Maryland Theatre over a period of time dating from 1936 to 1942; and I offer to show that the testimony of the witness would be that, with a C run, he could have as large an admission for the same period of time as did the Maryland Theatre.

Mr. Seeley: To which offer, the defendants and each thereof, object.

The Court: The objection has been sustained. What I am curious about is this: If he is not allowed to go into that feature of the house, how does he prove that damage here?

Mr. O'Brien: He is not going to prove his damages. They are not susceptible—

367 The Court: Then I am going to be rather slow in

making my ruling. If this precludes him from proving his damages, then I am going to make a different ruling.

Mr. O'Brien: On that theory, it would not—

The Court: He is not going to be barred from proving his damages. If the sustaining of this objection robs him of that right, I am going to permit him to answer the question.

Mr. McConnell: I think it does rob him of that right, certainly on this element.

The Court: There must be some place in this lawsuit where he is permitted to show his measure of damages. Now, it might not be a good theory, but he is entitled to have his day in court.

Mr. O'Brien: Of course, I do not know what evidence he has got to offer by way of damage.

Mr. McConnell: Well, that is very persuasive.

The Court: This might not be the right way to get this in. It might be that he can take the figures from out there and transpose these other pictures in some fashion, and work out some kind of a case; but somewhere along the line, he is entitled to put in his evidence as to his
368 damages, if he can prove it.

Now, if this is the only way he has of proving it, it might be that I was too quick in making my ruling, and it may be I may have to reverse it. If that is the only way you have of proving your damage, it might be something else.

Mr. McConnell: I think I come clearly within the rule of that case; that the rule of damages is the only method by which the cause is susceptible of proof.

Here we have a situation where we have comparable theatres, and where we show what the admissions were. Here is a man who is an expert in the business, and he sits here and says he could have gotten those admission prices, if it had not been for that conspiracy.

The Court: I am going to reverse myself and will allow him the right to answer the question.

Mr. O'Brien: That, your Honor, is on the theory, on the statement by Mr. McConnell that he has no other available evidence on the question of damages?

The Court: So far, that is all that has appeared here.

369 Mr. McConnell: That is all that has been offered.

The Court: And according to your statement, he

cannot have any other way of proving it. I do not think it was intended—

Mr. Seeley: My understanding—

The Court: (Continuing:)—that he be deprived of showing his damages here, if he has any.

Mr. Seeley: My understanding is that he intends to put on other evidence based upon figures produced through an auditor. That would be a quite different question than the one that was put to your Honor today.

Mr. McConnell: This is the question of the admissibility, if the Court please. The question of the weight and how much bearing it has, that is to be determined, it seems to me—

The Court: I read this case over that you submitted, and have read it two or three times. It pretty nearly comes within the rule announced in this case.

Mr. O'Brien: Well, the facts in that case are entirely different.

The Court: Not so far as they are set forth in the opinion.

370 Mr. O'Brien: Well, I think, your Honor, that that case clearly shows that man had a business, and the conspiracy stopped—his business ceased. The question is, what is the damage, from there on; but that is not what Mr. McConnell is driving at in his question. He is speculating as to what his profits would be if he were running in some other run; not if he was conducting his business in the same run.

The Court: There is no point to his proving what his profits would have amounted to, if he is conducting business in his present run. He has been doing that. That is what he is complaining about. He is complaining that, if he were given his right, as he sees his right to exist under this situation, he would have been permitted to do business under the different run.

Mr. McConnell: Certainly.

The Court: There is not any point to his proving what business he did under his present run.

Mr. McConnell: Exactly.

The Court: That is what he is complaining about.

Mr. McConnell: We were saying, in the open mar-
371 ket, we could bid and obtain that run.

The Court: The ruling will be that he may answer that question. Now, will you gentlemen be prepared to work Saturday?

Mr. McConnell: Yes, your Honor, I will.

The Court: All right. I will, too.

Mr. Adcock: I would like your Honor to read this opinion of Judge Cardoza before you determine that.

The Court: Well, I will read it, but I have been thinking it over here all afternoon, and I have been confronted with this question: How is this man going to prove his damage if he sustained any? I don't know how else he can prove it.

Mr. Seeley: For the record, may I bring in and read into the record a detailed statement of our objections to the question?

The Court: Yes, sir. I will see you folks at 10:30 in the morning.

(Whereupon the trial of the above entitled case was continued to Thursday, February 17, 1944, at the hour of 10:30 o'clock a. m.)

372 In the District Court of the United States

(Caption—)

Before Igoe, J., and J., Thursday, February 17, 1944, 10:30 o'clock A. M.

The Court met pursuant to adjournment.

Present: Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Seeley,
Mr. O'Brien.

Mr. Seeley: Before the jury comes in I would like to state some objections for the record.

(And thereupon the following proceedings were had out of the presence and hearing of the jury:)

373 The Court: All right, Mr. Seeley.

Mr. Seeley: The objections which I am about to state go to the pending question, the substance of which is: Assuming that the Jackson Park Theatre had played in C week from 1936 to 1942, have you an opinion as to whether its admissions would have been as much as the

admissions of the Maryland Theatre were during that period?

First, I want to state very briefly, and without any re-argument the objections, the nature of which was disclosed in our arguments yesterday.

We object that the answer necessarily called for by the question would be purely speculative, conjectural and uncertain because of the facts, first, that no data or factual basis has been introduced in evidence from which an answer to the question could be made with reasonable certainty; and, second, that in any event proof of alleged loss of profits in this kind of a case can not be made except on the basis of some comparison between the business done by the plaintiffs while it was allegedly interrupted unlawfully, and the business done by the same plaintiffs at a time when the interruption had not occurred.

Now, I want to pass on to two other objections
374 which I wish to add to that. The first has to do with the statute of limitations, which has been pleaded by all of the defendants here.

I think beyond question it is the law that the plaintiffs can recover only damages for the period of five years immediately preceding the filing of the complaint here, and that date I believe was July 28th, 1942, and the five year period would start on July 28th, 1937. The question calls for an answer covering the entire years of 1936 to 1942, inclusive, and we think it is objectionable under the statute unless it is limited to the five year period, and unless the data regarding the Maryland Theatre, upon which the entire question is based is broken down so that it all comes within that period. So much for that point.

Now, the last point I wish to make, and one which I think is very important here is this:

The plaintiffs have been proceeding throughout this case, in their complaint, in their opening statements, and so far as I can determine, with their proof, on the theory that the so called Chicago releasing system, which consists of first
runs in the Loop, followed by three weeks clearance,
375 followed by three A weeks, followed by two B weeks, followed by one C week, and then the first and successive weeks of general release, that that system, plus the admission prices, the minimum admission prices for each of those release periods is, in its entirety, the result of an unlawful conspiracy.

They are entitled, of course, to entertain that theory and attempt to prove it, but see where we have rights now? They are just approaching the question of proving their damages, and the first question is what would have happened if the Jackson Park Theatre had been playing in C week.

Now, what is C week? C week is nothing except as a part of the entire system of release, which the plaintiffs claim was in toto unlawful. C week, if it means anything upon which the witness can base an answer, means C week as it has been described here as part of the releasing system.

Now, then, the plaintiffs' proof of damages must correspond in theory to the plaintiffs theory of what the wrong was.

If the plaintiffs intend to go through with the theory that this entire system of releasing was unlawful, and that under conditions of free and open competition
376 something else would have occurred, then it seems to me clear the plaintiffs' proof of damages must go to the difference between what it would have earned under the alleged unlawful system and what it could have earned under whatever conditions would have been prevailing in the absence of any such unlawful system.

I do not see how they can be permitted to come in here and start to prove their damages on the assumption that they were still operating under the alleged unlawful system, the only difference being that while all the other theatres had the same place under that system, that they and they alone get a favored place, that is, not that they are seeking to prove what they could have done in free and open competition, apparently they are not at all, they are seeking to prove what they could have done under this alleged restraint of trade if they had been able to get a better position within the framework of that restraint of trade.

Those are my objections, your Honor.

The Court: What do you say? (Addressing Mr. McConnell).

377 Mr. McConnell: If the Court please, on this last point, I think I might take a little time on that. I would like to clarify in the Court's mind just where we are on that system of release.

We do set up that there is a system of release which

these gentlemen and their—not these gentlemen, but their clients, have set up here in the city of Chicago.—

Mr. Seeley: Speak just a little louder, please, Tom.

Mr. McConnell: They have set up the successive weeks of release.

Now, if that was all there was to it, if there was nothing else to it than that, if that had, as a matter of fact, come out of normal competitive conditions, it might be argued that was a natural adjustment coming about through natural forces of competition.

The plaintiffs in this case contend that this system of release is utilized by the plaintiffs to deprive—utilized by the defendants to deprive the plaintiffs of an untrammeled market.

Now, the gist of the plaintiffs' proof, and the gist of this lawsuit, and we are ahead of the time to argue this, but I want to clarify my position, the gist of the plain-
378 tiffs' proof is that we are living under a system which we did not create, which we did not make, but within that system, by prohibiting us from bidding for the playing positions which they have created, where we can not come in and bid our money against theirs.

In other words, accepting their theory of the system of release, we still say that when they set up a system whereby the circuits, the Balaban & Katz and Warner circuits, are sold ahead of us, where they won't deal with us prior to the time that they deal with the circuits, where they say, as your Honor will see in their own depositions, "we won't negotiate with anybody until after the circuits are sold", and it is only then that we can come in, then we say, taking any system, taking this system, taking their theory that it could be arrived at by normal competitive forces so far as the placing of successive runs is concerned, then we say that because we have been barred from the market, where we can not bid our dollar against their dollar, that we have been injured and been deprived of the chance to buy in that particular run.

Now, I think we have a perfect right in this case to take the successive runs as they have stated them and as
379 they have set them up. It is the situation under which we must live, as your Honor can see, we must live within that system; but we are saying that within that system, if they are going to justify it, they must permit the independent theatre to bid his dollar against the other

man's dollar, judging as to the different theatres and their ability to pay, and that sort of thing.

Now, when I go that far I do not have to concede that this is the best possible system and the best possible world that they have set up, but I do say this, that when they prevent us from bidding for a position in a situation which they have created, where they say, "Jackson Park, you can not deal with us until after we have dealt with these circuits", and then when we try to buy, they say, "it is too bad, but we have already sold to the circuit", and we are out in the cold. We can not do anything about it; and yet we have got to live in this situation.

Now, what are our damages flowing from that sort of a situation?

We certainly have a right to prove that if in a free and open competitive market we could have bought, we could have bid, and that our money would have bought
380 as much as their money would have bought, aside from the restraints which the evidence will show in this case, then we certainly have a right to show what our loss would have been in that situation, and our loss in that situation would have been the admissions which were obtained by the theatre who obtained the run in a way which we say violates the Sherman Act.

Now, our whole system here goes far beyond what has been proved in other cases which deal with successive runs. In those cases they assumed on the basis of what appeared in that particular record, that A, B, C, D, and E runs, or 1, 2 and 3, or however they designate them, came about through normal competitive factors. Here we are saying as we go along, and I think the proof will be conclusive when we are through, that in that system, even if it could be justified, we are barred, we can not do anything, we can not bid.

Now, that is one of the rights of any citizen, and any system which says that we can not do that, the burden is on them.

Now, how are we going to show what we would have had in the way of profits except by what a theatre
381 which is comparable, which we say has obtained this prior playing position by virtue of the action of a monopoly, that they never could have done through an open market.

We are going to show in evidence here that this Mary-

land Theatre had a $75,000 lease. It could not possibly have bid against the Jackson Park in an open, free market. This is only a leased theatre where they have got the run.

Now, isn't it proper for me to prove, your Honor, what we would have done if we had not been barred by what we say is this illegal conspiracy? Now, that is the theory behind our case.

Now, I don't think counsel has a right to say to the plaintiffs here that "you must confine your theory of this case to just one given theory which we want you to prove in this case." I have a right to assert a theory on this branch of the case, bringing a certain set of situations. Suppose here that the jury alone found that this system of release was reasonable? We still have the question in this case: In that system of release have we been barred by an illegal conspiracy or an illegal combination?

In these cases which we have argued, and I don't
382 want to reargue the case now, but it seems to me, that we have a right to prove our case in this court, and prove our damages on the theory of our case.

The Court: What about this question of the statute of limitations?

Mr. McConnell: On the question of the statute of limitations, I agree with Mr. Seeley, that we can not recover damages beyond the five year period, but I do not agree that that limits our proof. I think we are entitled to take a base period, not including that as part of the damages, and the Court will instruct the jury, I assume, that they can not consider the proof of damages, but to get a base, I think we are entitled to use any figures, five, ten years back, so far as that is concerned if they are material or relevant to determine what the theatres are doing.

The Court: What is the exact question you want to put to your witness, again?

Mr. McConnell: I think Mr. Seeley stated it correctly: As to whether he had an opinion,—oh, I think I put the statement beyond the opinion. I asked him that: If the Jackson Park Theatre had been able to obtain the C run, whether, on the basis of his experience as an operator
383 of motion pictures, he could say whether or not the Jackson Park would have obtained the same amount of admissions as are shown in the profit and loss statements of the Maryland Theatre for comparative years, from the time of the acquisition of the Theatre by the Plaintiffs down to the date of this lawsuit.

The Court: And that is on the theory that your Theatre is to be compared with the Maryland?

Mr. McConnell: Yes, your Honor.

The Court: And both as to the equipment and construction, and as to location?

Mr. McConnell: Yes, and all the factors that go into it.

Mr. O'Brien: I would like to add an objection, which I do not think was mentioned, and that is, your Honor, that there has been no proof to show the fact of damage or injury to the plaintiffs or to their property by reason of the fact that if it be true that they were precluded from playing in C week, and that under all of the cases that showing is an indispensable requirement before you can get into the question of proof of damages at all.

384 No. 2, on Mr. Seeley's point or one of his points, and also in relation to what Mr. McConnell said about it, that they have to live under the system. If the system was grown up or came up in a way which I think the proof already shows that it did, then it also shows that his place there, on the facts in evidence, is in first week of general release, and that he may not claim damages predicated on something that is within the framework of the system itself, as Mr. Seeley told you, is clearly established in the case of *First National* v. *Robison*, 72 Fed. 2d, 37.

I think that is all that I have to add.

The Court: I am going to permit the question to be asked. It is going to be limited to the period covered by the statute of limitations, which is from five years before the date of the filing of this suit.

Now, do you want him to put the question to the witness before you proceed further with your cross-examination, and then Mr. Seeley may have his opportunity after that, or do you want to go ahead now, and let him ask that later?

Mr. O'Brien: I would like to ask a few more ques-
385 tions which I had on matters which he has already testified, to keep the continuity; then let Mr. McConnell take that up, and Mr. Seeley will no doubt have some questions about it.

The Court: Well, is that satisfactory to Mr. Adcock? Do you want it done that way?

Mr. Adcock: It is satisfactory to me.

The Court: To cross-examine with these folks?

Mr. Adcock: I would rather cross-examine afterwards.

The Court: After this testimony goes in?

Mr. Adcock: Yes. After Mr. O'Brien—

The Court: After Mr. O'Brien concludes his cross-examination. we can put this question. All right. Bring in the jury.

Mr. Adcock. I haven't very many questions to ask; very few.

The Court: I see, there is another situation that has arisen. I find the wife of my former partner died, and she is going to be buried up in Evanston tomorrow afternoon, and I will have to go to the funeral, because it would not look just right if I didn't. So we can work here Saturday, but we will not work tomorrow afternoon.

Mr. Adcock: If your Honor please, your Honor
386 spoke of that yesterday, but it would be very inconvenient to me, for personal reasons, to go on on Saturday.

The Court: All right.

Mr. Adcock: I have been under,—I guess your Honor knows.

The Court: Could you give me any estimate of how long this case is going to run? What about you Mr. McConnell?

Mr. McConnell: I don't see how I can possibly get through inside of three days.

The Court: Then you folks want how long?

Mr. Seeley: Well, I have sixteen witnesses, and it may take three days for my people.

The Court: Do each of you want three days?

Mr. O'Brien: No. I would say about a day.

The Court: You wouldn't finish next week, then?

Mr. Adcock: I have several witnesses, some of them are very short, and some of them may be long; going into the question of relationship, so far as the location and character of the Theatre are concerned.

The Court: The reason I asked is, I have another case set for a week from Monday, and they are bringing a lot of witnesses here from New York and Washington, and I want to be in a position to tell those men whether
387 they should go ahead.

Mr. Seeley: We have got a legal holiday next week. What are we going to do about that?

The Court: We are going to work.

Mr. Seeley: It is O. K. with me. I just wanted to know.

The Court: There are only about three holidays recog-

nized by the National Government. I think New Years, Christmas and the Fourth of July.

Mr. Adcock: I should think, your Honor, it would take next week and the following week.

The Court: What?

Mr. Adcock: Next week and the following week.

The Court: Next week and the following week?

Mr. Adcock: Yes; to finish the entire case, and then there will be rebuttal.

The Court: Well, you are entitled to whatever time is necessary to do it.

Mr. Adcock: And then we have to argue to the jury.

The Court: All right. Are you ready to proceed?

Mr. O'Brien: Yes, your Honor.

388 (And thereupon the following proceedings were had in the presence and hearing of the jury:)

RICHARD SALKIN, a witness on behalf of the plaintiffs, having been previously sworn, resumed the stand, was examined further and testified as follows:

Cross-Examination by Mr. O'Brien (Cont'd).

Q. Is it true, Mr. Salkin, that the plaintiffs conferred with you before they purchased the Jackson Park?

A. They had talked to me a number of times, yes, sir.

Q. And did they ask you about the operating performance of the Theatre?

A. Yes, sir; they had talked about it, sir.

Q. Did you discuss that rather fully?

A. Well, the children being around, the boys being around the property at all times, yes, we have, as far as the Theatre operation.

Q. Were you present when the deal was closed for the purchase of the property?

A. No, sir.

Mr. Adcock: Can you have him talk a little louder?

Mr. O'Brien: Yes; just talk a little louder, Mr.

389 Salkin. It is hard to hear in the rear.

Q. How long before the closing of the deal was it that you talked to the plaintiffs?

A. I talked to them for a number of months, seven or eight months. I would always talk to the boys.

Q. I mean about this deal, when they were going to buy?

A. Well, I had never talked a lot about the deal, about going to buy. All I explained to them was what the Theatre was doing.

Q. How long before they bought was it that you explained that?

A. Five or six months.

Q. They told you they were going to buy?

A. John C. had; yes, sir.

Q. Yesterday I mentioned some of the circuits, S. & S., Allied, Schoenstadt, and I think you told us that at one time Mr. Brockell of Midwest was buying for the Jackson Park; isn't that true?

A. Yes, sir.

Q. Now, the circuits which I have mentioned were independent circuits, were they not?

A. S. & S. and Schoenstadts was an independent owned circuit.

Q. Yes.

390 A. Floyd Brockell was a group of men that had used him to do our buying.

Q. What I mean is, they did not buy for the affiliated exhibitors?

A. They were not affiliated exhibitors, no, sir.

Q. Then when you spoke of the distributors having dealt first with the circuit, you meant to include, did you not, the circuits which were buying for independent exhibitors?

A. No, sir. They dealt with—

Q. Do you mean that the distributors dealt with the Jackson Park or other subsequent run houses before they dealt with the circuits which I have mentioned?

A. No, sir; they dealt after.

Q. All right. Now, before Brockell was buying for the Jackson Park, and while Mr. Rice was the Manager of the Jackson Park, the Coston Circuit bought for the Jackson Park, did it not?

A. I don't ever recall the Coston Circuit buying for the Jackson Park.

Mr. Adcock: I can't hear him. I didn't hear that.

Mr. O'Brien: He said he didn't recall Coston Circuit buying for the Jackson Park.

Mr. Adcock: I do not think the jury can hear him.

The Witness: I don't ever recall that the Jackson
391 Park Theatre being bought,—film being bought for the Jackson Park Theatre by the Coston Circuit.

Mr. O'Brien: Q. Well, Mr. Rice may have bought before you came there, is that true?

A. Well, he bought before I came there, yes, sir.

Q. And he may have operated through the Coston Circuit, may he not, or don't you know?

A. Not that I know of, sir.

Q. You don't know?

A. No, sir.

Q. You told us yesterday that B. & K. commenced double featuring in certain of its south side houses around the middle of October, 1936, is that true?

A. The Tivoli commenced double feature on October 16th, 1936.

Mr. Adcock: What Theatre?

Mr. O'Brien: The Tivoli.

The Witness: The Tivoli, sir.

Mr. O'Brien: Q. I wanted to get that clear, Mr. Salkin, because the record shows that on other occasions you said that B. & K. commenced to double feature in December, 1936, and on another occasion you said that they commenced to double feature in November of 1936; but I think that
392 you have made some check on that, and your last and accurate answer is October 16th?

A. For the Tivoli, sir.

Q. All right. Well, that was a B. & K. institution?

A. Yes, sir.

Q. The most important house on the south side, wasn't it?

A. Yes, sir.

Q. So that you are aware of the fact in October of 1936 that B. & K. had commenced to double feature in the houses in that general territory?

A. Yes, sir.

Q. Now, did you, during October of 1936, have in mind that the Jackson Park might go double feature?

A. Not in October, no, sir. I tried to avoid going into double features.

Q. Well, did you then have in mind that you might, shortly thereafter, go into double features?

A. No, sir. I did not go till February of 1937.

Q. That is true, I know that is when you went, but did

you think, back in October, that you might go in sooner or later?

Mr. McConnell: I object to what he thought, that many years ago, what the man had in his mind.

Mr. O'Brien: Q. Where are your contracts, your Exhibits?

393 Mr. McConnell: The license contracts?

Mr. O'Brien: Yes.

Mr. McConnell: Which were exhibited yesterday?

Mr. O'Brien: Yes.

Mr. McConnell: We did not bring them into court this morning. We will get them if you want them.

Mr. O'Brien: Well, if they are needed to check my recollection. We may want to do that, but—

Mr. Adcock: We will need them on cross-examination.

Mr. O'Brien: Yes. They should be here, but I will ask the witness now if the plaintiffs' Exhibit 16, which is your contract made with Loew's, dated—

Mr. Adcock: I think we ought to have all the Exhibits here.

Mr. McConnell: All right, we will get them here right now.

Mr. Adcock: We ought to have all the Exhibits here in court.

Mr. McConnell: No argument about them. We will get them here.

Mr. O'Brien: That is all right, sure, we would like to have them. I will now ask—

The Court: Ask something about some other matter, until we get the contracts here.

394 Mr. O'Brien: I think the witness will recall this.

The Court: Apparently Mr. Adcock does not want to go ahead on that question.

Mr. Adcock: Oh, no, no, that is all right. I thought we ought to have them.

The Court: Do you want the contracts here before you proceed?

Mr. Adcock: No.

Mr. O'Brien: No, I don't.

Mr. Adcock: No.

The Court: All right. They are sending for them now, as I understand it.

Mr. McConnell: That is right.

Mr. O'Brien: I will withdraw that last question.

Q. You made a contract with Loew's for the Jackson Park in October of of 1936. Do you recall?

A. In October of 1936?

Q. Yes.

A. I don't recall.

Q. Well, you did make a contract with Loew's in 1936, didn't you?

A. Yes, sir.

Q. And you also made contracts with certain other distributors at that time, which are in evidence here?

A. In 1936, yes.

395 Q. Yes.

A. Yes.

Q. And if those contracts indicate that you specified with the distributors, including Loew's, that if the Jackson Park went double feature there would be a reduction in the price of certain product, then would that refresh your recollection so that you could tell us whether you had that possibility in your mind during October of 1936?

A. I don't recall of ever putting that clause in the contract, where there was reduction to be issued.

Q. I will show that to you, or I will have it when it comes.

A. All right.

Q. Who were you acting for when you made these contracts in 1936?

A. In 1936 the contracts that were signed before November were signed acting for Mr. E. I. Bloom.

Q. And they related to how much product, do you remember?

A. No, I do not.

Q. It was for the—

The Witness: (Interrupting.) It was the group product, yes.

Q. It was for the whole year, wasn't it?

A. That is right, sir.

396 Q. And that is the product which was used at the Theatre after the plaintiffs acquired it?

A. They acquired the product, and they took over the contract.

Q. Did you tell the plaintiffs anything about that provision in the contracts prior to the time they bought the property?

A. Which provision, sir?

Q. What was to be done in the event that you went to double features?

A. I didn't see the clause, sir. I don't recall ever signing that contract to that effect.

Q. Do you recall— All right. I will take that up when they come in. We will show you the contracts.

You do not recall the clause, but do you now recall having said anything to plaintiffs about it?

A. About the reduction?

Q. About the possibility of your going to double featuring?

A. I don't think so, sir.

Mr. Adcock: I could not hear that.

The Witness: I don't think so, sir.

The Court: "I don't think so, sir".

Mr. O'Brien: Q. Are you sure?

397 A. No, I didn't say I was sure, sir. I says I don't think so.

Mr. O'Brien: C. K. You spoke of clear pictures, and you said that after double featuring the number of clear pictures available to the Jackson Park was diminished, cut down, isn't that true?

A. Yes, sir.

Q. Now, Warner's Cosmopolitan, Frolic and Shore play in the same position as the Jackson Park, don't they?

A. Yes, sir.

Q. Whatever the effect as to clear pictures was on the Jackson Park was equally true of those three theatres, was it not?

A. Yes, sir.

Q. And even more so in the case of the Hamilton and any other Warner houses which play behind the Jackson Park?

A. The Hamilton was the only theatre that played behind.

Q. In your territory?

A. That is right, sir.

Q. Now, you said that the Avalon has only one change a week, didn't you?

A. Right, sir.

Q. And the Jeffery two?

A. Right.

398 Q. And I presume that is the policy of other houses which intervene between your run and theirs?

A. The original set-up of the contracts, years back that was, a first A house could only make one change.

Q. I am sorry, Mr. Salkin. I mean in 1937 when double featuring started.

A. Yes, sir.

Q. And the Jackson Park had three and a half to four changes a week, didn't it?

A. Under double features or under singles, sir?

Q. Under singles?

A. Yes, sir.

Q. And if the Avalon, Tower or Jeffery had instituted more changes per week than what they had under single features, you would have had a lot less clear product, wouldn't you?

A. Yes, sir.

Q. But they did not do that, did they?

A. No, sir.

Q. You gave your deposition in this case prior to the trial, didn't you?

A. Yes, sir.

Q. And at page 506 of that deposition you were asked: "So far as location is concerned, what is your notion
399 as to the comparison of the two theatres?", meaning the Jeffery and the Jackson Park, and your answers "I think the Jackson Park is in as good a position as the Jeffery Theatre." Is that true?

A. Yes, sir.

Q. And when you were asked: "You mean in as good a location?" And you said: "That is right." You recall that?

A. Yes, sir.

Q. And then the question: "From the standpoint of patron drawing power?" Then your answer: "That is right, sir."

A. Yes, sir.

Q. You still think that is so?

A. On account of the transportation, the L C.—the Jeffery only had C.—

Q. I just asked: You still think that is so?

A. Yes, sir.

400 Q. You told us that the Jackson Park installed Western Electric sound equipment; that is right, isn't it?

A. They installed it, yes sir.

Q. And, on your deposition, you said that just before that they threw out the Pacent system?

A. That is right, sir.

Q. That was not satisfactory?

A. No, sir.

Q. When was that done?

A. In 1928.

Q. Are the books, records, contracts and other documents relating to the operation of the Jackson Park Theatre prior to the year 1936 available?

A. No, sir, not the contracts. The books of the business are, yes, sir.

Q. What happened to the contracts?

A. Well, we never saved all them contracts.

Q. Were they destroyed?

A. Never figured we would have a reason to use them.

Q. Well, were they destroyed?

A. Yes, sir.

Q. And when you say the books, what books do you refer to as being still available?

A. The business.

Q. Well, what do the books consist of?

A. A daily report of the business done, a daily re-
401 port we had back in them days of the expense, cost of operation.

Q. Have you checks, vouchers?

A. No, I cannot answer that, sir.

Q. You told us that you had no voice in the establishment of what you call the release system; do you recall that?

A. That is right, sir.

Q. Was that system the same—is it the same now substantially as it was when you came to the theatre?

A. I don't think the weeks of release are the same. I think I paid to play closer to the Loop runs than I am playing today. When the Loop finished a picture I was playing a closer run.

Q. The last theatre built out there was the Southtown, wasn't it?

A. The last theatre built out in that section?

Q. Yes.

A. The Rhodes Theatre was built, just south and west of the Grove Warner Bros. Theatre.

Q. And prior to the Rhodes was it the Southtown?

A. Well, the new Woodlawn and the Southtown.

Q. That was about 1930 or '31?

A. I don't know the exact date, sir.

Q. But since that time the system has been substan-
402 tially the same?

A. Yes, sir.

Q. Now, let me ask you, going back to that time, if you had had any voice in the matter, was this system such as would have met with your approval as one conducive to the promotion of order and trade and commerce in the industry?

Mr. McConnell: I object to that as—

The Court: Objection sustained.

Mr. O'Brien: Q. When you said that you had no voice in the establishment of the system, did you mean to imply that there were things about the system which you considered undesirable?

Mr. McConnell: I object to his implication.

The Court: He may answer that.

The Witness: A. The playing position I was in repeated on a lot of theatres. I thought I would like to play in a better playing position than I was playing.

Q. Outside of that did you think the system was all right?

A. Well, if I could not better my playing position or could not get newer pictures, then the system was wrong. I had no right to bid for product; I had no right to better my condition; and I had no right to advance where I
403 would play better pictures, why then I thought the whole system was wrong.

Q. And you thought that as far back as 1931?

A. I always thought that as far as the Jackson Park Theatre.

Q. Well, let me ask you about the matter of minimum admission prices. You said yesterday that some of these contracts or all that you mentioned and described contained some requirement as to minimum admission prices. Do you remember that?

A. Yes, sir.

Q. Did you think that was a good or bad provision from the standpoint of the exhibitors?

A. I thought it was a bad provision to tell me what I could charge.

Q. Well, they told you the minimum amount you could charge, as I understand it.

A. That is right.

Q. And that has been true back as far as 1931 at least, hasn't it?

A. Yes, sir.

Q. And have you always thought that was bad, or was that a recent idea?

A. Yes, I always thought that was bad.

404 Q. Has there been any time since then when you have desired to charge less, a lesser admission price than the minimum prescribed?

A. I have charged it for some pictures that they had of the weeks of release, yes.

Q. But for pictures within the release have you desired to charge less?

A. I desired, but I have not been able to without forfeiting my contract.

Q. Can you tell us any specific picture within the release system that you desired to play for lesser admission prices?

A. Well, I never gave it a thought about any particular picture. I knew I would be violating my contract if I done it, so I didn't attempt to do it.

Q. Well, you don't relate that desire then to any particular picture?

A. There was a lot of pictures that I thought should not be run at the price I charged, but I had nothing to do but run them at that price according to my contract.

Q. Yesterday I asked you to identify your signature on the instrument marked Warner Exhibit 1 for identification. I call your attention to that exhibit and ask you to confirm the fact that it bears your signature.

405 (Handing document to the witness.)

Mr. McConnell: I think he is entitled to see the document. You have a lot of names on the document.

Mr. O'Brien: I am showing him a signature.

The Witness: The signature is all right.

The Court: What is the answer?

(Answer read.)

The Court: Is that what you said yesterday?—It is the same signature?

Mr. O'Brien: Yes, sir.

The Witness: Yes, sir.

Mr. O'Brien: Q. Now do you remember, back in 1932, joining in an agreement with many other exhibitors, independent exhibitors, in which, between you all, you subscribed to the establishment of a minimum admission price policy? Do you recall that?

Mr. McConnell: If the Court please, the witness is entitled to see a document that he is going to be cross-examined on it.

Mr. O'Brien: I am not cross-examining him on the document; I am asking him now if he remembers that occasion.

The Court: Oh, he may answer the question.

The Witness: A. I don't recall it, sir.

Mr. O'Brien: Q. Do you remember anything about that?

406 A. I don't recall, no, sir.

Q. Do you recall that in 1932 you, on behalf of the Jackson Park Theatre, stated that you believed it to be in the best—

Mr. McConnell: Now, I object to this document on the ground that if this witness signed some document in 1932 that was prior to the time these plaintiffs acquired this theatre, and they certainly cannot be bound to what this witness did.

Mr. O'Brien: That sounds reasonable, but that is not my purpose. My purpose is, this witness has testified right here on the stand in this court that he believed that a minimum price policy was wrong, that he ought to be able to charge whatever he wanted to charge below it, also that this system was wrong and that he always believed it, that it is no recent idea.

The Court: I take it you have some of document which is contrary to the views expressed by the witness on the stand.

Mr. O'Brien: That is right.

The Court: Well, if you have the document why don't you introduce it?

Mr. O'Brien: I will offer it in evidence at the proper time.

407 Q. You have no present recollection of that?

The Witness: A. No, sir.

Mr. O'Brien: Q. Prior to October, 1936, did you double feature on short subject contracts?

A. We did not double feature. We played them as
411 part of a playing program.

Q. Yes, but you did not double feature on them?

A. We did not double feature, but under double feature policy we had not as much use for single reels on short subjects as we had when we were running single feature program. That was the reason. I could not run double features on a lot of shorts and the company forced me to buy them shorts.

Mr. O'Brien: I move that be stricken, that the company forced him to buy them shorts.

The Court: The latter part may go out.

Mr. O'Brien: Q. Mr. Salkin, all I am trying to find out is whether this contract refreshes your recollection as to whether you had in mind, in October of 1936, that the Jackson Park might later double feature.

A. No, I hadn't it in mind. I wanted to see what the results of the Tivoli Theatre would be before I would make up my mind.

Mr. O'Brien: I shall offer these exhibits or tender them, those which I have had identified, in regular order, as part of our case, your Honor. I understand it may not now be done by consent.

That is all.

412 The Court: Is that all of your cross?

Mr. O'Brien: Yes, sir, that is all of mine.

The Court: Shall we have this other matter put in at this time or do you want to finish this, Mr. Adcock, first?

Mr. Adcock: I think Mr. Seeley has some cross-examination he wants to take up.

The Court: On what?

Mr. Adcock: In connection with the question that is going to be put and the answer to it.

The Court: All right. Yesterday a question was put to the witness and an objection was made. The objection was sustained and I have concluded now that, in my opinion, the objection ought to be overruled. So Mr. McConnell will now put a question which was not put yesterday.

413 *Further Direct Examination by Mr. McConnell.*

Q. Calling your attention to the subject of your examination yesterday with reference to admissions of the Maryland theatre, do you recall reading "Admissions" in evidence?

A. Yes, sir.

Q. Admission figures on the Maryland theatre?

A. Yes, sir.

Q. Now, this covers the period from July 28, 1937, to July 28, 1942. If, during that period, you had been able to obtain a C run for the Jackson Park Theatre, would you, or would the Jackson Park Theatre, rather, have been able to have obtained as much admission as is shown in the Maryland theatre's figures during that same period of time?

A. Yes, sir.

Mr. Seeley: I take it there is no point repeating the objection.

The Court: No. It is understood that all the objections made yesterday, both in the presence of the jury and outside the presence of the jury, are now repeated.

Mr. O'Brien: And those of this morning.

The Court: Yes, sir.

414 Mr. McConnell: Q. Have you the question in mind now?

The Witness: A. Yes, sir.

Q. Will you answer the question?

A. Yes, sir.

Mr. McConnell: Cross.

Mr. Seeley: Shall we have a five minute recess?

The Court: No. Take a ten minute recess.

(A recess was taken, after which the following further proceedings were had herein:)

Mr. Seeley: Shall I proceed, your Honor?

The Court: Yes, sir.

415 *Cross-Examination by Mr. Seeley.*

Q. Mr. Salkin, as I understand it, the opinion that you gave just before we had the recess was based upon supposing that from July, 1937, until July, 1942, the Jackson Park Theatre had played in C weeks. That is correct, is it not—as the basis of your answer?

The Witness: The opinion when I said in reference to what, sir?

The Court: When you gave your answer you assumed that the Jackson Park Theatre was playing in the C week class?

The Witness: A. Yes, sir.

The Court: That was your question, wasn't it?

Mr. Seeley: That is right.

Q. And, based on that assumption, I believe you said that it would have taken in admissions as much as those that the Maryland took in; that is right, isn't it?

A. Yes, sir.

Q. Now, I understand, from the testimony that you gave yesterday, that the business that any theatre can do in a given run is affected by the runs in which its competitors play and by the clearances that exists among the
416 several competitors and by their respective admission price. Am I right?

A. Yes, sir.

Q. Now, in answering the question as you did, as to what admissions the Jackson Park would have taken in, in C week, are you assuming that the Jackson Park acquired that C week position in free and open competition with its competing theatres?

A. Yes, sir. That is the only way I would get it.

Q. The answer is yes, is that right?

A. Yes.

Q. All right. Now then, assuming, as you have, that the Jackson Park Theatre was playing in C week, and that it was in free and open competition with its competing theatres, what assumption have you made as to where, in what playing position the Tivoli Theatre would have been operating?

A. Could not have gone much further than first run in the territory.

Mr. Seeley: I move to strike that as not responsive.

The Court: It may be stricken.

Mr. Seeley: Will you read the question to the witness.

417 The Court: You understand the question, don't you?

The Witness: Yes.

The Court: What is your answer?

The Witness: I don't know, sir.

Mr. Seeley: Q. Well, would it make any difference in your answer where the Tivoli Theatre was playing?

A. No.

Q. Would the Jackson Park Theatre's receipts be the same if the Tivoli Theatre had been playing in C week?

A. No, the Jackson Park's receipts would be better.

Q. Would the Jackson Park's receipts be the same if the Tivoli Theatre had four weeks' clearance over C week? It did, didn't it? Change the question. Would it be better if it had 8 weeks over C week?

The Witness: Eight weeks or week and week, day and date, which do you mean?

Mr. Seeley: I am asking you if it would make any difference in the amount of admission prices the Jackson Park would take in where the Tivoli played and what terms it had.

The Witness: Yes, it certainly would.

Q. All right. Now, in answering Mr. McConnell's
418 question, where were you assuming that the Tivoli played?

A. In the position they are playing in under that set-up.

Q. And with that same clearance they played in?

A. The same clearances up against C week.

Q. And, as to the Tower, were you also assuming that it played B week?

A. Yes, sir.

Q. And you were assuming that the Avalon Theatre played in A week?

A. Right, sir.

Q. And were you assuming that the Maryland Theatre played in C week?

A. If they wished to, yes.

Mr. Seeley: I move that be stricken.

The Court: Yes.

Mr. Seeley: Can you answer the question?

The Witness: Yes.

Mr. Seeley: Q. Were you assuming that the Jeffery Theatre was also playing in C week during that period?

A. Yes, sir.

Q. Were you assuming that the Grove Theatre was also playing in C week during that period?

419 A. Yes, sir.

Q. And where were assuming that the Shore Theatre played during that period?

A. I am not assuming where the Shore played. I was interested in the Jackson Park.

Q. Would it have made any difference in the admissions of the Jackson Park where the Shore played?

A. Yes.

Q. What difference would it have made?

A. They would have been playing day and date with me.

Q. Would that have had an effect upon the Jackson Park's admissions?

A. I imagine it would, sir.

Q. How much effect?

A. I don't know.

Q. Did you make any attempt to estimate it?

A. No, sir.

Q. When you answered Mr. McConnell's question, were you assuming that the Shore was playing in C week day and date with you?

A. No, sir, I would not assume that.

Q. Did you take into consideration at all where the Shore Theatre might have been playing if the Jackson Park played in C week?

420 A. No, sir.

Q. Did you make any assumption as to where the Hamilton Theatre might have been playing if the Jackson Park had been playing in C week?

A. Where they always played, behind the Jackson Park.

Q. How far behind?

A. A week.

Q. You are assuming, then, that the Hamilton would have moved up to the first week position from second week, is that right?

A. Yes, sir.

Q. Now, how about admission price? What admission price did you assume that each of these theatres would be charging?

A. I am now charging the same admission price as the Maryland. It has charged C week prices.

Mr. Seeley: I move that be stricken.

The Court: It may go out.

Mr. Seeley: Do you want the question read?

The Witness: I charged my regular week of admission price.

Q. What admission price would that have been?

A. 30 cents.

Q. And what admission prices would the others

421 have been charging?

A. The prices they are charging today, I suppose.

Q. That is the basis anyway upon which you answered the question, is that right?

A. That is right.

Q. And do you think it is a reasonable assumption that, under conditions of free and open competition, those theatres would be charging the same admission prices that they are charging today?

A. I don't know what they would do. I don't know what their thoughts are.

Mr. Seeley: I ask that that be stricken.

The Court: It may go out.

Mr. McConnell: I think—

Mr. Seeley: Can you answer my question?

The Witness: Well, I have no way to judge what admission price they would charge. I know what they are charging for the run that they are in and that is the run I asked for.

Mr. Seeley: I move that be stricken. Would you like to have the question read?

The Witness: A. Yes, sir.

Mr. McConnell: I think the witness is entitled to make that explanation.

The Court: Let us read the question.

422 (Question read as follows: "And do you think it is a reasonable assumption that, under conditions of free and open competition, those theatres would be charging the same admission prices that they are charging today?")

The Court: I think the answer may stand.

Mr. Seeley: Q. In answering Mr. McConnell's question, did you assume that they would be charging the same admission price they are charging today?

A. Well, on a free and open market admission prices would mean nothing. I could charge any admission I wanted or do as I saw fit. I mean I charged admission prices I thought I could get for the run in the theatre, what the public would pay to see them pictures in that playing position.

Q. I understand. And I believe you told me that, in answering Mr. O'Connell's question, you were assuming that there was a free and open market, is that right?

A. Yes, sir.

Q. And that would mean that every theatre out there could charge any price it wanted, wouldn't it?

A. That is right, sir.

423 Q. All right. Now, in answering Mr. McConnell's question as to what the admission price of the Jackson Park would be, what did you have in your mind as to what admission prices would be charged by its competitors in this free and open market that you talk about?

A. Well, all you have got is what has happened in the past to go by. I don't know what would happen. I don't know what they would do. I have no line on what they would. I try to get the prices that under the conditions we are exisiting in now and see if I could exist that way. If I was wrong, I would change my prices. I don't know what I could do.

Q. And what you did would depend in part upon what admission prices your competitors charged, wouldn't it?

A. That is right.

Q. Well, you don't know what admission price you could maintain, and you don't know what admission prices any of your competitors would have maintained, under this condition of free and open competition, how can you say with certainty that under those conditions you would have taken in as much in admissions as the Maryland did during those years?

424 A. You said under the condition of what we are existing under now, under the same condition as the Maryland Theatre is running in the past, if I could have, if I done the same amount of business I did under that present setup of theirs. They did not say anything about admission prices being changed, they did not say anything about the system of admission being changed. Mr. McConnell asked me if I thought I could do the same amount of business as the Maryland Theatre done under the condition the Maryland Theatre operated, and that is what I answered him.

Q. And when you answered him, then, you were assuming that all of those competing theatres did business just as they are doing it now, is that right?

A. I was not assuming. I was told that is what I was to compare it with.

Q. Well, in order to answer the question, didn't you have to assume something about what your competitors were doing?

Mr. McConnell: I object to any argument as to what he had to have to answer the question.

Mr. Seeley: I am entitled, I think, to a lot of
425 latitude here.

The Court: He may answer that question.

The Witness: I don't know what they were going to do. I figure if I had the run and had charge of the same admission that I am charging today, which is the same admission as the Maryland Theatre is charging today, with the amount of increase of my patronage, that I could have done as much business as they done with the Jackson Park Theatre.

Mr. Seeley: Q. And do you believe that you could do that regardless of where your competitors played and regardless of what admission prices they charged?

Mr. McConnell: I think, your Honor, that he went to great length to show that he was assuming that there was no change in their position.

The Court: Well, he may answer that question. Do you understand the question, Mr. Witness?

The Witness: Yes, sir. Yes, sir, I could do as much, yes.

Mr. Seeley: Q. If the Maryland and the Jeffery and the Grove dropped their admission prices to 20 cents, could you then have taken in as much in three weeks as the Maryland did, in three years?

A. Well, at 20 cents admission could they have
426 done as much business as they are doing at 30 cents admission?

Mr. Seeley: I am not asking you what they could have done. If they had charged a lower admission price, do you still say that you, at the Jackson Park, could have taken in this amount of admissions you have been talking about?

A. Well, would I charge 30 cents? I might charge 20 cents and do more business with pictures that are newer and pictures that are run earlier.

Q. Well, what admission price would you have charged in order to take in this amount of admissions that you have testified to?

A. With the seating capacity I got at 20 cents admission, I could do that.

Q. Is that what you would charge?

A. If they were charging it, yes, sir.

Q. Would it make any difference in the amount you took in whether you were charging 30 cents and they were

charging 20 cents, or whether you were charging 20 cents and they were charging 30 cents?

A. Well, if I charged 30 cents I would be getting 427 33⅓ per cent more money in at the box office. Would you get as much people to come if they were charging 20 cents in the same week—

A. And I was charging 30?

Q. Yes, sir.

A. I don't think I would charge 30 cents if they were charging 20,—we are going to bargain for cheaper shows in the same playing position, and the same running time.

Q. In other words, in answering Mr. McConnell's question you were assuming the existence of the same runs and the same minimum admission prices for each run as have existed, is that correct?

A. That was my understanding, yes, sir.

Q. And still you were assuming that that situation would have existed under conditions of free and open competition, is that right?

Mr. McConnell: I object to that. He did not testify to that.

Mr. Seeley: He did.

The Court: Do you understand that question, Mr. Witness?

The Witness: No, I don't, sir.

The Court: All right, ask another question.

Mr. Seeley: Q. Are you of are you not, in answer-
428 ing Mr. McConnell's question, assuming that from 1937 to 1942, the Jackson Park would have earned these admissions that you speak of under conditions of free and open competition with its competitors?

The Witness: A. Yes, sir.

Q. All right, and you are also assuming, are you not, that under that free and open competition the same runs on the same minimum admission prices for each run would have prevailed as have in fact prevailed; is that not right?

Mr. McConnell: I object to that. He did not testify to that.

Mr. Seeley: Well, we will see what he does testify to.

The Court: Well, you ask if he assumed that. Did you assume those facts he has just related in making your answer to Mr. McConnell's question or not?

The Witness: Well, for comparison I assumed them, yes, sir.

The Court: All right, that is the answer.

429 Mr. Seeley: Well, have you an opinion as to whether or not those same runs and minimum admission price would have been in effect under conditions of free and open competition?

Mr. McConnell: He answered that question.

Mr. Seeley: That is a different question.

The Witness: A. I have no opinion of what they are liable to do to change conditions. I don't know what their policy would be. If business was bad and they were not doing much business, I don't know what they would do under free and open conditions.

Q. But whatever they did would affect the business done at the Jackson Park, would it not?

A. It may, and maybe I do things that affect business, to. I have a right to try out and do different things.

Q. In answering Mr. McConnell's question, did you just leave all those factors out of consideration?

A. I did not leave no factors. We are going under business conditions today, and if I can do as much business as Maryland in C week, there is no mention about what

430 tactics used against me, or what tactics I use to get business.

Q. I am going now to proceed on what you told me your assumption was, how you understood Mr. McConnell's question. In order to take in the box office of Jackson Park in C week as many admissions as the Maryland took in in those years, how many additional people more than you attracted in the first week, would you have had attracted in C week?

A. A week, sir?

Q. You can give it by weeks, if you wish.

A. About 100,000 people a year.

Q. And where would those people come from?

A. They would come from the surrounding territory around the theatre.

Q. They would be people who would desire to see the popular pictures in C week?

A. People that would want to see newer pictures and would not wait for me to show them.

Q. Now, those people who would want to see pictures in C week, went to the Maryland, the Jeffery and the Grove, is that right?

A. Yes, sir.

Q. And to get 100,000 of them in a year to come
431 to Jackson Park, you would have had to take 100,000 people away from the other theatres?

A. Just 2,000 people a week.

Q. That is, the number of people in a community who want to see a picture at a particular time, is pretty well fixed, regardless of how many theatres they can go to see it?

A. To see it at a fixed time?

Q. Yes, any particular time.

A. Yes. They look in the paper and see a picture they want to see, and go to the theatre that is running it.

Q. If there are three theatres in the neighborhood running it, that patronage would be divided among the three theatres, is that right?

A. Yes.

Q. And if there are ten theatres in the neighborhood running it, that same patronage would be divided among the ten, is that right?

A. The theatre count, the offer of the theatre, all those things would help.

Q. I did not mean it would be divided equally.

A. Every theatre bids for its own patronage.

432 Q. During the period you have spoken of, from 1937 to 1942, did the Maryland, the Jeffery and the Grove have enough seats to accommodate all the people in that territory who wanted to see a picture in C week?

A. I never seen Warner Bros. figures. I don't know what they are doing. I don't check their theatres.

Q. Do you have an opinion at all as to whether they were running to capacity or were not?

A. I never checked their theatres. I was busy operating the Jackson Park. I have no time to check theirs.

Q. Do you think that ten theatres of the size and character of Jackson Park could operate in C week in the same territory where Jackson Park and Maryland and Jeffery and the Grove are?

A. I know in the year 1936, I had people come from some place, because business was very good. I handled a lot of people. Where they came from, I don't know whose territory, but they came in the theatre.

Mr. Seeley: I move that be stricken.

433 The Court: It may go out.

Mr. O'Brien: I would like to note an objection to that, as making an irresponsive speech.

The Court: Do you understand the question, Mr. Witness?

The Witness: A. Yes, sir.

The Court: Answer it, please.

A. I don't think all the theatres would. Some may and some may not. The theatre that has the most to offer would do the most business.

Mr. Seeley: Q. How about five theatres playing the same week, the same picture, do you think all five would make a profit?

A. They would do a lot better than the ten, maybe.

Q. Do you think all five of them could do all right in that position, in that neighborhood?

A. I don't know. It would depend on the expense and other things involved in the theatre.

Q. I see. Now, then, when Jackson Park Theatre was playing in the first week of release, didn't it get a considerable amount of patronage from people who wanted to see that picture, but who for some reason had not gotten around to see it in the earlier weeks of release?

434 A. I don't think there was enough of them left to get too much patronage.

Q. But whatever you got, included a number of those people?

A. Oh, yes.

Q. Thousands of them, is that right?

A. Well, thousands, yes.

Q. If you move up in C week, a lot of those people who did not get to see the picture in C week, you would not get, would you?

A. I think that is a poor comparison. A majority of people who live close to the theatre would wait for the Jackson Park to get it. I may get people who had not seen it and a few who would not have to go out of my district to see the picture ahead of me.

Q. Then, if you move up to C week, a certain number of people you get in the first week, you would not get in C week?

A. Why?

Q. People who did not want to see it in C week?

A. There wouldn't be enough of them left.

Q. Well, how many would there be?

A. We are doing a bad business today. The people—

435 Mr. Seeley: If you please, I do not want any more speeches from you.

Mr. McConnell: I object.

The Court: If you have an objection, Mr. Seeley, make it. It is not necessary to rebuke the witness.

Mr. Seeley: I regret that I became impatient. I apologize to the witness.

Q. In answering Mr. McConnell's question, what product did you assume that the Jackson Park would have in C week?

A. The product I have today.

Q. That is, the product of all the distributors?

A. Yes, sir.

Q. Did you assume that you would acquire that product in free and open competition?

A. Yes.

Q. There is nothing inconsistent, is there, between free and open competition and an exhibitor getting product from all the distributors in the same playing position?

A. No, sir.

Q. Now, Mr. Salkin in answer to Mr. McConnell's question, were you making a statement of which you were very certain, or were you to some extent guessing at
436 things?

Mr. McConnell: I object to that.

The Court: Objection sustained.

Mr. Seeley: Q. Mr. Salkin, did the answer which you made to Mr. McConnell's question, involve making any estimates?

A. These estimates of my own judgment in that theatre brings in close contact with a number of things.

Q. Just tell what estimates you made in arriving at the answer.

A. The amount of increase in business a run of that type would mean to Jackson Park, I could increase my business that much by running pictures newer than I am running them now.

Q. Now, to what, if any, data or figures did you resort in making that estimate?

A. I have no figures that I got that estimate from.

Mr. Adcock: I did not hear that.

A. I have no figures.

Mr. Seeley: Q. When did you first think about the question of how much more business you could do if you operated in C week during those years?

A. As long as I have been with Jackson Park
437 Theatre, I have always felt Jackson Park Theatre was affected by other theatres playing the picture before me, in any position they played. If I could play newer pictures, I could do more business and not lose patronage.

Q. When did you first consider trying to arrive at an estimate of how much more you could do in C week?

A. I did not arrive at that. They were shown to me. I was asked if I thought I could do as much business as the Maryland in C week release. I think that the Jackson Park, with a small increase,—that would have to be made in comparison. I could do as much business as the Maryland with newer pictures.

Q. How long have you thought that?

A. I always thought Jackson Park ought to have newer pictures.

Mr. Seeley: I move that be stricken.

The Court: The question is, how long have you thought that?

A. If I could do as much as Maryland?

The Court: Yes.

A. I just saw the Maryland figures lately. I never
438 seen them before.

Mr. Seeley: Q. Before you saw the Maryland figures, had you any idea in your mind as to how much better you could do in C week?

A. I had an idea what I could do. I did not know what they were doing.

Q. What was your idea before you saw those figures? How much better did you think you could do in C week?

A. I thought Jackson Park could increase its business a lot by running pictures newer.

Q. How much?

A. Double.

Q. Are you pretty sure of that?

A. As far as my judgment goes.

The Court: That is all you are asking?

Mr. Seeley: That is all I am asking.

The Witness: A. Yes, sir.

Q. I want to return again to the deposition which you gave before this trial, and ask you if this question was put to you:

"Q. In your opinion, then, were the license fees which you were paying, lower than the fair license fees which you

would have been willing to pay for advance run, the C run?''

And did you make this answer?

439 "A. That is a hard question, because I don't know how much business I can do under C run. I imagine what I can do, but we are not talking about C run.''

Did you make that answer?

The Witness: Yes.

Q. Now, in answering Mr. McConnell's question, about the admissions to the Jackson Park Theatre, were you assuming that you would have been double featuring during those years?

A. I don't assume what I would have done. I would have gone along as conditions went along. I would have met competition. I don't think I would have started double featuring,—maybe under open marketing. I may have run singles.

Q. You understand, under Mr. McConnell's question, that you were taking all the other theatres just as they were, just as they actually did play, is that right?

A. Yes, sir.

Q. What they actually did was double feature?

A. Yes.

Q. If they were all double featuring and Jackson Park was playing either first or C week, you assume you

440 would be double featuring, too?

A. Yes, sir.

Q. Is there anything inconsistent between Jackson Park and all those other theatres double featuring, and the existence of free and open competition?

A. I don't understand that, sir.

Q. Could double featuring among all these theatres, in your opinion, exist under conditions of free and open competition?

Mr. McConnell: I object to this as not proper cross-examination on the particular question asked this witness, to which Mr. Seeley's line of questioning is directed.

Mr. Seeley: I think on the last question, you may be right. I will withdraw that. That is all of my cross-examination.

May I make a motion right after the session, a very short one?

The Court: Yes.

441 *Cross-Examination by Mr. Adcock.*

Q. You talked with Mr. Wirthwein, as I understand it, in 1937, in the fall of 1937, about buying product for the 1937-1938 season, is that right? You testified to that on direct examination?

A. Yes, sir. Mr. Wirthwein came in for 1937-38 product.

Q. You had some conversation with him at that time about moving the Jackson Park up to C week, is that correct?

A. Yes, sir.

Q. And was that conversation with respect to negotiations or in negotiations of purchasing product for 1937-38 season?

A. When we were dealing on the 1937-38, yes, sir.

Q. You also talked to Mr. Smith on the same subject?

A. The previous year.

Q. You did not talk to him in 1937, on the subject of purchasing 1937-38 product, is that right?

A. I am not positive that Mr. Smith was there in 1935-36, and 1936-37, and Mr. Wirthwein came in in 1937-
442 38, or if Mr. Smith were there in 1937-38, and Mr. Wirthwein came in in 1938-39. They were both in during those years.

Q. But you talked to either Mr. Wirthwein or Mr. Smith?

A. Yes, sir.

Q. Or both of them?

A. Both of them.

Q. In the fall of 1937?

A. That is right.

Q. With respect to licensing 1937-38 product?

A. To either one of them, yes, sir.

Q. What time in the fall of 1937-38, did you talk to them?

A. I imagine we started early in the fall. I imagine maybe in July when their policies were announced, which generally came out in June.

Q. Over what period of time did that last, the conversations about 1937-38 product in 1937?

A. Until the contract was eventually signed in the position I was to buy it, which was maybe in September or October.

Q. Of 1937?

A. Yes, sir.

Q. All right. (To Mr. McConnell:) Have you got those contracts here? I want the Paramount 1937-38 season. They are marked 1937-38 season.

443 Q. Will you look at this exhibit which is marked Plaintiffs' Exhibit 14, and give me the date of the contract which covered the 1937-38 product which you say you signed in 1937.

(Witness examining document.)

Q. Now, you have spent how much time looking through that?

The Witness: A. There is no contract for 1937.

Q. Then will you look at the 1936-37 folder?

A. I have not got that.

Q. It is Exhibit 13.

A. That is Warner Bros.

Q. Oh. I want Paramount.

The Court: Maybe we better take our recess until 2:00 o'clock, and then straighten this out.

Mr. Adcock: I would like the witness to answer this question now.

Q. I show you Exhibit 22, and ask you to look through that folder, and see if you find the contract dated December 4, 1936?

A. Yes, sir.

Q. Which applies to the 1937-38 product, relates to it.

A. Here is the contract signed on December 4, 1936.

Q. Yes. What product does it relate to?

444 Mr. McConnell: If the Court please, the contract speaks for itself, I don't see the point of asking the witness what it sets forth.

The Court: I think that is a very sensible suggestion.

Mr. Adcock: I asked him—

Mr. McConnell: It is in evidence.

The Court: He said he found the contract dated a certain date. That is the answer.

Mr. Adcock: I asked what it covers. Did you find the contract?

A. Yes, sir.

Q. Does it relate to S-9 group?

A. S-8 and S-9.

Q. The S-8 group was 1936-37 product?

A. That is right.

Q. And the S-9 was 1937-38 product?

A. That is right.

Q. So on December 4, 1936, you did sign a contract relating to the 1937-38 product, did you not?

A. That is right.

Q. And you didn't sign any contract in 1937 or 1938, relating to the 1937-38 product, did you?

A. That is right.

Q. So when you stated you had a conversation with
445 Mr. Wirthwein and Mr. Smith, or one or both of them in 1937, in the fall of 1937, with respect to the licensing 1937-38 product, you were in error?

A. Yes, sir.

Q. I asked you about that in the deposition, and you were in error then, were you not?

A. Yes, sir.

Q. And corrected it finally in the deposition?

A. After I seen these contracts.

Q. And you now remember you are wrong?

The Court: Is it all right to take a recess now? Recess until 2:00 o'clock.

(Whereupon an adjournment was taken to 2:00 o'clock p. m. of the same day, Thursday, February 17, 1944.)

446 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—4525) * *

Before Igoe, J., and Jury.

Thursday, February 17, 1944.
2:00 o'clock P. M.

The Court met pursuant to noon recess.

Present: As before.

The Court: You may proceed.

Mr. Seeley: I had a motion I said I was going to make, at noon.

The Court: Yes.

Mr. Seeley: The motion is to strike the last answer given by the witness Salkin on direct examination, on the ground that the cross-examination shows that the answer is speculative and conjectural.

The Court: I don't know what the answer was.

447 Mr. Seeley: Well, I mean his statement, that if the Jackson Park had played in C week, it would have earned as much as the Maryland Theatre did.

The Court: What do you say? (Addressing Mr. McConnell.)

Mr. McConnell: Your Honor has heard the testimony. He has shown the basis of it, and his business experience. I thought it was strengthened.

The Court: I will disallow that motion. All right, Mr. Adcock, you may proceed.

448 RICHARD SALKIN, a witness on behalf of the plaintiffs, having been previously sworn, resumed the stand for further examination, and testified as follows:

Cross-Examination (Continued) by Mr. Adcock.

Q. You testified that in the buying season for 1940-'41 product, salesmen of various distributors told you that you could not move up to C week, is that correct?

A. Yes, sir.

Q. And you talked to Loeb of Fox, King of Metro, Wirthwein of Paramount, Phillips of Columbia, Rose of Vitagraph, Cozzi of RKO. You testified to that on your direct examination, did you not?

A. Yes, sir.

Q. Were those conversations in the fall of the year 1940?

A. In the buying season, yes, sir, in the early part of the fall.

Q. In the early part of the fall?

A. Yes, sir.

Q. And you also testified that you had similar conversations with the same salesmen in 1941, did you not?

449 A. Right. The only thing is in 1940 and '41 Mr. Rose was not a salesman for Warner Bros. Mr. Mendelson was the salesman.

Q. And if you did testify that Mr. Rose, that you talked to Mr. Rose, of Vitagraph, in 1941, you would like to correct your testimony and substitute the name of Teddy Mendelson?

A. Teddy Mendelson for 1940-'41, and '41 and '42 was Mr. Harry Goldman of that Company.

Q. And when did the consent decree go into effect that affected the buying season, buying product, buying pictures?

A. 1941-'42, sir.

Q. It went into effect in the fall of 1941, did it not?

A. Right, sir.

Q. And about September 1st, 1941?

A. Well, in the latter month—October and November releases start coming through, sir.

Q. From that time on you purchased or arranged for the licensing of film from time to time with your distributors in not more than blocks of five pictures, is that correct?

A. Well, in blocks of five, but sometimes we bought more than one block.

450 Q. Yes.

A. Sometimes we bought one individual picture if it was not for a year's output.

Q. So that you had more contracts and yet the same number of pictures as compared with the previous contract, didn't you?

A. Yes, sir.

Q. And your contracts were made right along during the entire year, the making of the contracts was not confined so much to a particular period of the year, is that correct?

A. That is right, sir.

Q. And you had conversations with all of these salesmen whom I have mentioned, representing these different distributors, during 1941 and 1942 season, up to say July 28th, 1942?

A. Well, 1942 we were buying 1942 product yet we were not buying like in the previous years 1942 and '43.

Q. I see. And each time that you bought product during that period, 1940 and 1941, 1941 to '42 season, or 1940, and '42 up to the 28th day of July, 1942, you talked with salesmen representing those distributors, regarding the making of contracts, and at that time, the times that you talked to them, you asked to move up to C week, is that right?

451 A. Yes, sir. I asked for a better playing position.

Q. Then you also testified, did you not, that in the latter part of the year 1940, or the first part of the year 1941, that you had an arrangement or understanding with Coston or Halperin, or both, representing Warners, that the Jeffery could be moved to B week, the Jackson Park

to C week, the Hamilton to first week, and that the Hamilton might temporarily move to first week pending the consummation of such arrangement, is that right?

A. I talked to Mr. Coston and Mr. Halperin about helping me move the Jackson Park up into C week, and they thought if they could move the Jeffery into B week, that they would not object to the Jackson Park being moved into C week; and in the meantime they asked me, while they were trying to do that, if I would leave the Hamilton Theatre move up into first week of release.

Q. And you testified on direct-examination that understanding, whatever it was, was made in the latter part of the year 1940 or in the early part of the year 1941, is that correct?

A. Right.

Q. And you understood that from about February,
452 1941, I believe, according to your testimony, that Mr. Coston was making an effort to accomplish the object of moving the Jeffery to B week, the Jackson Park to C week, and the Hamilton to first week, is that right?

A. Right.

Q. And those efforts failed of fruit, of becoming fruitful, about July 6th, 1942, is that correct?

A. Well, a little ahead of that.

Q. So that Mr. Coston was engaged on that enterprise of moving those Theatres into different positions about February, 1941, until July 6th, 1942, and that was your testimony on direct, wasn't it?

A. Yes, sir.

Mr. Adcock: May I have Exhibit 12?

Q. I show you plaintiffs' Exhibit 12.

Oh, before I do that I want to ask you if, after this arrangement was made with Mr. Coston, with respect to moving those theatres into different playing positions, and his starting on making those efforts, you talked to any salesmen of these different distributors about moving up?

A. Yes. I explained to them, sir, that I was trying to move up, and that Warners was trying to help me move up.

453 Q. That was after this arrangement was made?

A. After this arrangement had been made, from that standpoint of explaining Warners were helping me to try to move up.

Q. Well, did you request that they then move you up to a better playing position with respect to the product that you were then contracting for, or making arrangements to contract for?

A. I always attempted to move my position up at all times.

Mr. Adcock: Would you read the question?

(Question read.)

Mr. Adcock: Now, I move that the answer be stricken.

The Court: It may go out.

Mr. Adcock: Q. Now, will you answer the question?

A. Yes, sir.

Q. Will you look at this Exhibit 12 and see if you can find the letter there—that Exhibit is in evidence, your Honor—dated some time in 1939, the latter part of the year 1939, November 21, 1939, from Vitagraph to you?

A. Yes, sir.

Q. Will you read that to the jury?

A. The letter from Warners', or the letter—the 454 letter to me from Warners', sir?

Q. The letter to you from Vitagraph.

A. (Reading.) "Mr. Richard Salkin, Jackson Park Theatre, 6711 Stony Island Avenue, Chicago, Illinois.

Dear Mr. Salkin:

"I have been advised by Mr. Ed. Mager of Allied Theatres, as you may recall, it is agreeable with you for the Hamilton Theatre to play in first week of release, providing the minimum admissions are charged as follows: Matinee 20 cents adults, evening 30 cents adults. I will appreciate your confirming this to me by return mail. Tom Gillen, Branch Manager of Warner Bros."

Q. And that is dated November 21, 1939?

A. Right, sir.

Mr. Adcock: I wonder if I could look at the Fox film, 1939-'40?

Q. I now show you plaintiff's Exhibit 25, which I understand, your Honor, is in evidence. It is entitled—it is a folder—

The Court: I understand all those folders are in evidence.

Mr. Adcock: Yes.

The Court: Is that right?

454 Mr. McConnell: That is correct.

Mr. Adcock: Covering the '38-39, '39-40 season.

Q. You find the letter there dated February 16th, 1940?

A. Yes.

Q. To you, from Mr. Eckhardt?

A. Yes, sir.

Q. Will you read that letter?

A. (Reading.) "Mr. R. B. Salkin, Manager, Jackson Park Theatre, 6711 Stony Island Avenue, Chicago. Dear Mr. Salkin:

"Confirming conversation with our Mr. Van Dyke and Mr. Loeb, in which you advised that it is satisfactory to book the Hamilton Theatre on 1939-'40 product in the first week of release providing the minimum admission is charged as follows: Matinee, adults 20 cents, evening, adults 30. It is understood, however, that this is a temporary arrangement. We will continue to book the Hamilton Theatre in first week until such time as we are advised by you to the contrary.

"Yours very truly,

"Twentieth Century-Fox",

and signed by the Manager.

456 Q. Did you get any letters of a similar nature from the other distributors?

A. I don't think they all did, no, no, sir.

Q. Did you notify the other distributors that you had this temporary arrangement consenting to the Hamilton moving to first week?

A. Well, sir, in our business there was not an awful lot of correspondence. There was an awful lot of verbal, and if an exchange called, we verified it by telling them it was O. K. to book the Hamilton Theatre. Most of our business was not in correspondence. It was mostly verbal, with the companies.

Mr. Adcock: That is all right. You have answered the question.

Q. Did you notify them verbally that they could book the Hamilton in first week of general release?

A. Either verbally or by letter, sir.

Q. I see. Now, having looked at those two letters, I will ask you if you were not mistaken when you stated that the arrangement that you had with Coston with refer-

ence to Hamilton's moving up, and with reference to his attempt, and the attempt to change the playing position of the Jeffery and Jackson Park, was not made in the fall of 1939 and the early part of 1940 instead of 1940 and 1941, as you stated?

457 A. According to these letters it was made in 1939, sir.

Q. Then you were mistaken in your testimony on direct when you stated it was the later season, is that correct?

A. Yes.

Q. I show you a document which is dated July 6th, 1942, which purports to be a letter from the Jackson Park Theatre, by R. B. Salkin, to Mr. J. J. Donohue, Paramount Pictures, 1306 South Michigan Avenue, and ask you if that is your signature?

A. Yes, sir.

Q. You sent that letter to Mr. Donohue, did you not?

A. Yes, sir.

Mr. Adcock: Do you know whether a copy of this letter appears in any of these folders (addressing Mr. McConnell)?

Mr. McConnell: May I see the letter?

Mr. Adcock: Yes. That has been offered in evidence?

Mr. McConnell: I am certain it does, but I can not say offhand which file it is in, but I am sure it is in the correspondence.

Mr. Adcock: Then, on that basis, I will ask, pending our being able to find it, I will ask that Mr. Salkin read

458 this letter to the jury.

Mr. McConnell: Are you offering it as your Exhibit?

Mr. Adcock: No. I am asking him to read it to the jury. It is in evidence.

The Witness: (Reading.)

"Paramount Pictures Corporation,
"1306 S. Michigan Ave., Chicago, Ills.

"Dear Mr. Donohue:

"This is to advise you that effective with the August, 1942, releases we shall expect you to put the Hamilton Theatre back to their playing position of second week of Chicago General Release. Mr. Alex. Halperin has been advised of this move."

Q. Did you write similar letters to the agents of the Producers Releasing Corporation? I have just named them: Monogram Pictures Corporation, Republic Picture Corporation, RKO Distributing Corporation, Twentieth Century-Fox Film Corporation, United Artists Corporation, Calumet Pictures Corporation, Universal Film Exchange, Vitagraph, Metro-Goldwyn-Mayer?

A. Calumet Pictures?

Q. Pardon?

459 A. Calumet Pictures, did you say?

Mr. Adcock: Columbia. Did I say "Calumet"? Columbia Pictures Corporation?

A. Yes.

Mr. Adcock: And it is your understanding, I believe, Mr. McConnell, that copies of those letters are in these folders somewhere, that have been offered in evidence?

Mr. McConnell: Well, I would assume they were. I do not think we need to have any doubt about it. If you want to offer that out of turn, you may.

Mr. Adcock: Well, oh, all right.

The Witness: Originally they were there.

Mr. McConnell: So we know what we are talking about in the record now, I think you ought to offer it.

Mr. Adcock: It has been read, and that is sufficient.

The Court: Do you want to give it a number, so that the record will show what it is?

Mr. Adcock: Well, mark it Paramount B. & K. Exhibit 1.

The Court: All right.

Mr. Adcock: For identification.

The Court: By agreement it is admitted in evidence at this time.

460 (Said document, so offered, was received in evidence as PARAMOUNT B. & K. EXHIBIT 1 of February 17th, 1944, and is in words and figures as follows, to-wit:)

461 Mr. Adcock: Q. Now, at the time you wrote this letter, or these letters, dated July 6th, 1942, which you have seen and we have been talking about, were there any contracts—did you have unexpired contracts with any of the distributors?

A. All of them, sir, except RKO Producers Distributing, where I was buying individual pictures.

Mr. Adcock: Now, you have answered the question.

The Witness: Yes, sir.

Mr. Adcock: Q. Mr. Coston told you that he was unable to make the arrangements or to accomplish moving up of the Jeffery and Jackson Park to the positions which we have mentioned, is that correct?

A. Yes, sir.

Q. And that was shortly prior to the time that you wrote these letters of July 6th, 1942?

A. Right, sir.

Q. And did he give you the reason?

A. The reason?

Q. Yes.

A. Yes, sir. Producers Distributors would not allow him to move it up, and Balaban & Katz would not leave him move up the Theatre, the Jeffery Theatre.

Q. In other words, what he said was that they
462 would not, Balaban & Katz would not waive clearance?

A. Right, sir.

Mr. McConnell: I object to that.

Mr. Adcock: Q. Is that right?

Mr. McConnell: He answered the question once.

Mr. Adcock: Q. Did he say that Balaban & Katz, or words to that effect, would not waive clearance that it had over the Jeffery and Jackson Park, for the Maryland and the Tower Theatres, or words to that effect?

A. Yes, sir.

Q. If the arrangement that you have testified to, made with reference to moving up of these theatres, the Jackson Park to C week, the Jeffery to B week, and the Hamilton to first week, had been consummated or had become effective, would that have increased the admission prices to people who ordinarily attended the Jackson Park, Hamilton and Jeffery Theatres?

A. It would have increased the admission prices of the Jeffery. The Hamilton and the Jackson Park, it would not have increased their admission prices, because they were charging more than our regular admission prices.

463 Q. How much would it have increased the admission price of the Jeffery?

A. About four cents.

Q. That is, I am speaking of the admission price before taxes. Four cents, would it?

A. Yes.

Q. What is the admission price in B week?

A. Forty.
Q. That is the minimum admission, isn't it?
A. That is right, sir.
Q. What is the minimum admission in C week?
A. Thirty.
Q. And the minimum admission in first week is 25, isn't it?
A. Right, sir.
Q. So it would have increased the minimum admission price five cents as to the Jackson Park, and ten cents as to the Jeffery, and five cents as to the Hamilton, would it not?
A. You asked me at that time what increase it would be at the admission we were charging. We were not charging the minimum.
Q. I am asking you—will you read the last question; and that is what I want answered.

Mr. McConnell: Now, I want to object to that on
464 the ground that it does not correctly state the witness's prior testimony. He testified that the Jackson Park was charging 30 cents, and this question says would it amount to an increase of five cents on the Jackson Park admission price. It is perfectly clear the witness did not testify that way.

Mr. Adcock: I am asking him. I asked the question. Now, could it be read?

Q. Would the arrangement I have referred to, if carried out, and if it had become effective, increased the minimum admission price for those Theatres that I have mentioned?
A. Yes.
Q. Five cents, wouldn't it?
A. Yes, sir.
Q. And how long had you been, had the Jackson Park been charging 30 cents adult admission?
A. 1930.
Q. From what time?
A. 1930.
Q. Wasn't it from 1935? Didn't you testify yesterday or the day before that it was 1935?

Mr. McConnell: Well, I object to asking the witness questions of that kind without giving a chance to look at
465 his records, or something.

Mr. Adcock: I am perfectly willing that he should look at his records, if he has them. In fact, they are here.

The Witness: You have all the records, sir.
Mr. Adcock: I have not.
The Witness: You have all my books.
Mr. Adcock: I did have some.
The Witness: You had them; I know they were here yesterday.
Mr. Adcock: I think that is in November, you testified, of 1935, about the opening, the opening after remodeling.
A. November of 1935 we started 30 cents admission on Sundays and holidays.
Q. How long; that was all performances?
A. On Sundays and holidays after 2:30 P. M. We charged 25 cents till 2:30.
Q. On Sundays and holidays. Then when did you start—did the admission prices continue at that figure?
I think I have a memorandum that may help you.
A. 30 cents on February 22nd, 1937, 30 cents every day.
Q. That was evening admission?
A. Yes, sir.
466 Q. And the afternoon admission was—the price was 20 cents?
A. 20 cents, right, sir.
Q. And that has continued up to the present time?
A. Yes, sir.
Q. You are now charging the same, is that correct?
A. Yes, sir.
Q. I want to ask you just a question or two about the air conditioning.
You had no cooling system or arrangement for cooling the air at the Jackson Park Theatre prior to the fall, October or November, 1935, is that correct?
A. I had no way of cooling air?
Q. Yes.
A. Yes. We had a cooler, and we had a blower system for cooling the air, not refrigeration, but we had a system of bringing in fresh air into the Theatre.
Q. That is, you got whatever cool air there was on the outside, is that right?
A. Well, if you call that cool air, fans cooled the air.
Q. Just the running of the fans cools air?
A. Yes, sir.
Q. Then if you had an air at a temperature of 100
467 degrees, and ran it through the fan, it would cool it, is that your idea?

A. Cool it to a certain extent, yes, sir.

Q. And assuming that you ran the air through fans in some place where the air was 100 degrees temperature, is that your understanding?

A. The fan in the place where the air was 100?

Q. Yes.

A. Well, that air was up higher; that came in through a duct away up on top of the building, not down off the ground, not from body heat. It was clean, fresh air.

Q. There wasn't any artificial cooling unit, was there?

A. No, sir. No, sir.

Q. And in 1935 what was the cooling unit or method that was used, installed?

A. Installed? Washed air, sir.

Q. And how was the cooling accomplished by washed air?

A. Air was run through cold water, as cold as it come from the city mains.

Q. And how long did you use that system?

A. Until 1938.

Q. Did you install a different method for cooling
468 the air in 1938?

A. Yes, sir.

Q. What was that?

A. We used natural ice to cool the water, and cooling the water cooler than the city water.

Q. You did not use any mechanical means of refrigeration, did you?

A. No, sir.

Q. What time in 1938 was that installed?

A. Well, we used it for the summer of 1938.

Mr. Adcock: I think that is all, your Honor, that I have.

Mr. O'Brien: I have just a couple of questions, your Honor, if I may.

469 *Cross-Examination by Mr. O'Brien.*

Q. Ted Mendelson is in the Army, isn't he?

A. The last—the best of my knowledge, yes, Mr. Mendelson is in the Army.

Q. And Mr. Lundgren, Mr. Lundgren is dead?

A. Right, sir.

Mr. O'Brien: Now, I think, your Honor, in fairness to

the witness I should let him examine this document which I had identified this morning. The cases seem to indicate that. I do not think he looked at is except for the signature.

A. The signature.

Q. It will take you a minute to look that over, Mr. Salkin. I have a question or two to ask you. I am referring, for the record, to Warners 1 for identification (handing document to the witness).

(A short delay.)

The Court: Q. Have you finished reading it, Mr. Witness?

A. Yes, sir.

The Court: What is your question, now, Mr. O'Brien?

Mr. O'Brien: Will you Honor just excuse me?

The Court: Yes.

470 Mr. McConnell: Have you any objection to my reading it, Mr. O'Brien?

Mr. O'Brien: Beg pardon?

Mr. McConnell: May I see the document?

Mr. O'Brien: Not at this time, no.

Q. Do you recall having made this instrument on or about the date it bears?

A. That instrument was originally set up at that time—

Q. Do you recall having entered into it?

A. Yes, sir.

Q. At that time?

A. Yes.

Mr. O'Brien: That is all.

The Witness: Yes. There was a reason for it.

Mr. O'Brien: Q. Did it correctly state your understandingof the situation at that time?

Mr. McConnell: Just a minute, now. I object to cross-examining this witness on a document not in evidence.

Mr. O'Brien: Well, that is not the law, your Honor. The case, and I brought them here, show that the correct practice is to introduce the document as part of our case, as your Honor ruled this morning, but that it is also necessary that we give the witness the document, let him examine it, and find out not only if he signed it, but if
471 he recalls the situation and the circumstances at the time of the signing, the fact that he did execute it, and that it is in the same condition now as then.

The Court: He has admitted he executed it. Why go any further than that?

Mr. O'Brien: Well, the cases indicate that it is necessary not only to show his signature, but that he recalls the instrument and that it is in the same condition as it was when he executed it.

The Court: Your question goes further than that.

Mr. O'Brien: Anything further than that I will withdraw.

The Court: Q. Is that instrument in the same condition now as when you signed it?

A. Yes.

The Court: That is what I understand your answer was.

The Witness: Yes, sir.

Mr. O'Brien: That is all.

The Court: Is that all, Mr. McConnell? Mr. Seeley, do you wish to cross-examine him about this?

Mr. Seeley: I did not intend to, no, but I had forgotten two questions.

472 The Court: All right.

Mr. Seeley: May I have leave to ask him?

The Court: All right.

473 *Cross-Examination by Mr. Seeley.*

Q. Mr. Salkin, is it true that in the summer of 1936 and prior to the time when the Tivoli began to double feature, that there were a number of independent houses in Chicago that were double featuring?

A. To the best of my knowledge there was, sir.

Q. And am I also correct that for a period of some months in 1931 and 1932 there was double featuring at both independent and affiliated houses?

A. Yes, sir.

Mr. Seeley: Thank you.

The Court: You have some redirect?

Mr. Adcock: Pardon me. I just want to ask a few questions.

The Court: Go ahead.

474 *Cross-Examination by Mr. Adcock.*

Q. Did that include also the years 1930, 1931, 1932, and a part of 1933?

A. Well, I can not say, sir, but I know in October of 1932 we stopped double featuring in the City of Chicago. How long a period I am not positive.

Mr. O'Brien: Your Honor, as far as I am concerned, I will permit Mr. Salkin to make any explanation that he may care to about the circumstances under which that document was executed.

Mr. McConnell: I object to that.

The Court: We have passed that. Now, go ahead. Is there any re-direct?

Mr. McConnell: Yes, your Honor, there is.

475 *Redirect Examination by Mr. McConnell.*

Q. Mr. Salkin, you testified that triple features were shown in the Jackson Park. Now, when did that start?

A. May I look at my books to refresh my mind?

Q. Yes, you may.

A. I have them right here.

We started on August the 23rd, 1942, on Sunday, with one change per week.

Q. Now, how many feet are there in the ordinary feature film, motion picture film?

A. Well, a feature is anything over the amount of 4,000 feet. Some features run as high as ten or twelve thousand feet.

Q. Isn't it 5,000 feet which defines a feature picture?

A. No. 4,000 feet.

Q. 4,000 feet?

A. Yes, sir.

Q. All right. When you double feature you run 8,000 feet, isn't that right, 8,000 feet of picture?

A. Well, that is hard to say, sir. Sometimes it runs 10,000, sometimes 9,000 and sometimes 11,000; just depends. There is no set length on features.

476 Q. Well, you would run at least 8,000 feet with a double feature program, would you not?

A. Yes, sir.

Q. Now, how many feet of film are you running under this triple feature, or did you run?

A. I ran the smaller pictures, what was littler pictures, by the little companies. The triple feature in most cases did not run as large or amount of time that the big combinations of double features that I ran on the end of the week. Most of them triple features did not take as much time to run as my big double features took.

Q. All right. Why were you running the triple feature?

A. To try to get business into my theatre.

Q. You testified that at one time in your business life you were a salesman?

A. Yes, sir.

Q. For pictures?

A. Yes, sir.

Q. And in response to Mr. Seeley's cross-examination I believe you testified that you sold certain theatres there in your district, motion picture film, is that correct?

A. Yes, sir.

Q. And what company were you working for at
477 that time?

A. At which time, sir?

Q. At the time that Mr. Seeley was cross-examining you about, when you were selling pictures in that district in which the Jackson Park is located?

A. I think he had reference to when I was with Twentieth Century-Fox. It was the Fox Film Company then.

Q. That is his client in this lawsuit, isn't it?

A. Yes, sir. I was working for his client in this lawsuit.

Q. So whatever you did or you didn't do with reference to selling pictures at that time you were not doing for the plaintiffs in this case?

A. No, sir. I was working for Fox at that time.

Q. You were following their directions, were you not?

A. Yes, sir.

Q. Now, at that time you mentioned that the circuits were sold in the front office. What did you mean by that?

A. They were sold by the Manager, by the Sales Manager, in the office.

Q. And you had nothing to do with selling the circuits, is that right?

A. No, sir.

Q. And at the time you were permitted as a salesman to sell, had the circuits been sold or not?

478 A. Yes, sir.

Q. Now, some of these theatres in the Jackson Park district were owned by circuits, were they not, prior to Balaban & Katz and Warner Bros. taking them over?

A. Yes, sir.

Q. And what circuits?

A. L. & T.

Q. What is L. & T.?

A. Lubliner & Trinz; and National Theatres.

Q. Were those the two circuits that had theatres in that district?

A. Yes, sir.

Q. Now, you were a little bit—I will withdraw that. You made several statements about the date of double features in the Balaban & Katz houses in the south side district.

I ask you to look at this chart and refresh your recollection with reference to the date when double featuring started in the different Balaban & Katz Theatres, and then tell the jury the dates upon which the different Balaban & Katz theatres in that district started playing double features?

A. The Maryland Theatre started on 12-25, December 25th, 1936. The Tivoli Theatre started double features on October 16th, 1936; and the Tower Theatre started
479 double features on 11-24, 1936, November 24th, 1936.

Q. Those are the only Balaban & Katz Theatres that you are referring to, in that district?

A. That is right, in that district, sir.

Q. Now, you spoke of the Allied Theatres as booking pictures for the Jackson Park Theatre.

Will you explain to the jury, to the Court also, what booking is?

A. Well, they gave me the cooperation of handling all my correspondence and all my setting up of pictures; they reviewed the pictures; they checked on the footage; they made up the sheets, and release sheets for me, and gave me a lot of office cooperation that I did not have in my own theatre.

Q. That has nothing to do with buying pictures, does it?

A. No, sir; just a cooperation of their learning of what they had learned in booking different theatres, seeing the different operations, that I was not in contact with.

Q. Now, you testified on cross-examination by Mr Seeley, that if he had data in his hand or in his possession which showed that the Kimbark Theatre had played pictures ahead of the Jackson Park, and that the Jack-
480 son Park had repeated those pictures on the Kimbark Theatre, that then it would appear to you that the Jackson Park did not have the prior playing position. Do you remember that question, and answer that you gave?

A. Yes, sir.

Q. Well, now, isn't it a fact that under the system of buying pictures at that time, the mere fact that for any particular picture or any particular group of pictures the theatres might have played out of their customary order would not definitely define a playing position?

A. No. Any theatre had a right to buy, and it is possible that the Jackson Park did not want the pictures at the time, and they felt that they did not need them, and the Kimbark or the other theatres had bought their pictures, but anything the Jackson Park wanted to buy, with the seating capacity, they could have gone out and bid for them and bought them; must have been that the Jackson Park at that time did not want to buy pictures.

Mr. Seeley: I move that those portions of the witness's answer comprising his statement as to what might have been the fact, what might have been the reason
481 for something the Jackson Park did, be stricken.

Mr. McConnell: Well, if the Court please, he is explaining.

The Court: The motion is overruled.

Mr. McConnell: Q. So that the fact that they did play few pictures behind the Kimbark would not change your statement that the Jackson Park did play ahead of competition in that district?

Mr. O'Brien: I object to "play ahead of competition". He did not testify it played ahead of competition in the district.

Mr. McConnell: He testified to playing first run in that district.

Mr. O'Brien: No, he did not.

The Court: He played ahead of those who are not entitled to play first run, is that what you mean?

Mr. McConnell: Yes.

Mr. O'Brien: First he talks about the Kimbark, then he stretches to all the competition in the district.

Mr. McConnell: Q. Have you got the question in mind?

A. Yes, sir.

Q. Will you answer it, please?

A. May I have that re-read to me?

Mr. McConnell: Read the question to the witness.
482 (Question read).

Mr. O'Brien: I still object to it.

The Court: Take ou the word "competition" and put in some other word, to cover his objection.

Mr. McConnell: Other theatres in that district?

Mr. O'Brien: I still object to that. He did not testify that the Jackson Park played ahead of the other theatres.

Mr. McConnell: He testified on direct, if the Court please, his knowledge of that district when he first knew it, that the Jackson Park played ahead of all the others in that district, but on cross-examination—

Mr. O'Brien: Oh, well, he is speaking of 1916.

The Court: What period is your question directed to?

Mr. McConnell: The same period Mr. Seeley's cross-examination was directed to, the early period.

The Court: Well, if it is directed to that period, he may answer the question. Do you understand the question now, Mr. Witness?

The Witness: Yes.

The Court: What is your answer?

A. Yes.

The Court: All right. Let's have another question.

Mr. McConnell: Q. You were asked on cross-ex-
483 amination about certain short subjects. I think the question was asked by Mr. Adcock, as to you stipulating that you would not have certain short subjects if you had double features. Do you recall that?

A. Yes.

Q. Do you recall that line of questions?

A. Yes.

Mr. Adcock: I didn't ask him.

Mr. McConnell: Well, either one of you, you or Mr. O'Brien. Some lawyer asked you that question.

Q. Now, what short subjects did you have to buy, or did you buy, at each buying season?

Mr. Seeley: I object to that as outside the scope of the direct—the cross. Mr. Adcock's question did not go into that subject at all.

Mr. O'Brien: Neither did I. What I was asking the witness was whether he had any intention, had it in mind, in October of 1936, that he might later double feature; not a word about short subjects. He volunteered something about that, and the Court struck it; and it is not in his direct, and it is not in his cross, and it is not proper re-direct.

Mr. McConnell: He volunteered an explanation. It was not responsive to the question, but he had a right
484 to make an explanation, and on re-direct I think I have a right to let him make it.

The Court: All right. Go ahead. The objection is overruled. Do you know what the question is, Mr. Witness?

The Witness: No, sir. I should like to have it read.

The Court: Read the question.

(Question read.)

Mr. McConnell: I will withdraw that.

Q. What explanation did you want to make about short subjects? It was asked by Mr. Adcock or Mr. O'Brien, whoever it was that asked it.

A. Well, they asked about why I had asked for an elimination of short subjects if I had in mind at that time of going into double features; and at that time Balaban & Katz had started in the double features, and I did not want to have too many shorts to have to play, so we inserted in the contract, if I went into double features I could eliminate a percentage of the shorts.

Mr. O'Brien: Well, I have no objection to that.

Mr. McConnell: That is all.

Mr. Seeley: That is all.

Mr. Adcock: I will ask one question.

485 *Recross Examination by Mr. Adcock.*

Q. There were other Balaban & Katz theatres on the south side of Chicago, or one other, that played double feature on 10-16-36, October 16th, 1936, weren't there, the Southtown?

A. The Southtown.

Q. And then there were three theatres in other parts of the City in the same playing position, the Marbo, Uptown and Granada, that played on the same day, double features, is that right?

A. I don't know the dates, sir. You asked me about the sections around near the Jackson Park.

Q. At the time double features were started in these Balaban & Katz Theatres, wasn't there considerable publicity in the City of Chicago about that change of policy?

A. In what form?

Q. In the newspapers, in the trade papers, the Film Daily, and other papers that are circulated among theatre owners, operators and others interested?

A. I imagine it was wrote, but I don't know how much publicity.

Q. Yes; but you remember, don't you, that at the time double features were started, that you saw notations
486 about it, and you knew before they started that they were going to start?

A. I had heard it, yes.

Q. That is, before October 16th, 1936, you knew that they were going to commence a change of policy, didn't you?

A. I had heard so. I had heard it, yes, sir.

Mr. Adcock: All right.

The Court: Is that all?

Mr. McConnell: Yes. You are excused.

The Court: All right, Mr. Witness, you may step down.

(Witness excused.)

Mr. McConnell: Mr. Mager, please.

487 EDWARD J. MAGER, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined, and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your name, please?

A. Edward J. Mager.

Q. And where do you live, Mr. Mager?

A. 7538 Essex Avenue, Chicago.

Q. What is your business or occupation?

A. Employed by the Allied Theatres of Illinois.

Q. And how long have you been so employed?

A. Since—with Allied Theatres since 1933.

Mr. O'Brien: Talk just a little louder, Mr. Mager, please. I cannot hear you.

The Witness: With the Allied Theatres since 1933.

Mr. McConnell: Q. And in what capacity?

A. I was booker at that time.

Q. What other employment have you had with Allied?

A. Assistant buyer and booker, buyer and booker.

Q. And for how long a period had you been an assistant buyer and booker?

A. Since '36, 1936.

488 Q. You have been subpoenaed as a witness in this case, have you not?

A. I have.

Q. You are appearing in response to that subpoena?
A. Yes, I am.
Q. Do you know Mr. Richard Salkin?
A. I do.
Q. And how long have you known him?
A. Oh, for twenty years or more.
Q. Have you sat in at any conferences at which Mr. Salkin was present, and representatives of different distributors of motion picture film with reference to discussion of the playing position of the Jackson Park Theatre?

Mr. Seeley: Excuse me, Mr. McConnell. I do not think you meant to, but your question is so worded, it says, "representatives of different distributors". You do not mean a representative who represents several distributors?

Mr. McConnell: No. Representatives, I said; I thought I said, different distributors. Do you have the question in mind?

A. No, I didn't sit in as a representative for any distributor.

Mr. McConnell: Read the question to the witness, 489 please?

(Question read.)

A. Yes.

Mr. McConnell: Q. And when did such conferences start, at which you were present?

A. About 1936.

Q. Do you recall any conference in 1936 with any representative of Vitagraph at which you and Mr. Salkin were present?

A. Yes, I do.

Q. And where would that be?

A. It was at the Vitagraph office, 1307 South Wabash Avenue, in Chicago.

Q. And who was present?

A. Mr. Salkin, and Mr. Lundgren, and myself.

Q. And what was the subject of the conversation there?

A. Well, we—Mr. Lundgren had been out to see Mr. Salkin, and made an appointment to come into his office with me, to discuss the buying of their product for the Jackson Park Theatre, and to ascertain the playing position for the Jackson Park Theatre.

Q. What did Mr. Salkin say with reference to a playing position for the Jackson Park?

A. Well, our talks with the various distributor repre-

sentatives were to purchase and license films for the Jackson Park Theatre in C week of Chicago general release.

489½ Q. Now, you know what the C week of release is, of course?

A. I do.

Q. What did the distributors say or the representatives of the distributors say at such conference?

Mr. O'Brien: Which are you talking about?

Mr. McConnell: Well, we are in Vitagraph. That is the only one I have got into yet.

Mr. O'Brien: I object to that. Mr. Lundgren is dead and the testimony shows he was the only one present in this conversation.

Mr. McConnell: I don't understand that bars a disinterested witness from testifying. This man has no interest in this lawsuit. He is here by subpoenae.

The Court: Is that the exception?

Mr. McConnell: It is the interested witness that cannot testify.

The Court: The objection is overruled.

Mr. McConnell: Q. What did he say to that?

The Witness: A. Well, Mr. Lundgren advised us that the best playing position he could sell us was the first week of release.

Mr. O'Brien: May I interrupt again, your Honor? It seems to me this witness is not a distinterested wit-
490 ness, as Mr. McConnell claims. He claims to have been working for the Jackson Park.

The Court: Claims to have been working for what?

Mr. O'Brien: For the Jackson Park Theatre. He was assisting in the buying and booking.

Mr. McConnell: Well, the question is whether he has any interest in the lawsuit, directly or indirectly.

Mr. O'Brien: He has that much interest.

The Court: Isn't that the question to which this case goes?

Mr. O'Brien: Exactly.

The Court: Whether the witness is interested in the result of the lawsuit. If they are they cannot testify as to a conversation with a deceased person.

Mr. O'Brien: It seems to me he was acting as the agent, as an agent for the Jackson Park.

Mr. McConnell: Well, he has no interest.

The Court: The objection will be overruled.

Mr. McConnell: Q. Now, did you have any conversation with any other representative of any other distributor in that buying season or that time of year?

The Witness: A. Well, we went around to all the distributors at the buying season time to negotiate purchases of films for the Jackson Park Theatre.

491 Q. Well, did you have discussions with reference to the run, playing position of the Jackson Park?

A. In every instance.

Q. All right. Now let us see who you talked with. We had Vitagraph. Now what about Paramount? Who did you talk to at Paramount?

A. Well, going back to 1936, we talked to a salesman, Eugene Smith.

Q. And what was the subject of that conversation that you had with him?

A. The same as with the rest of them. They were unable to sell us C week of the release and the only thing they had was the first week of release to sell.

Q. Did they say anything about why they only had the first week to sell?

A. They told us that the circuits had bought the prior runs, had bought the C week of release and held clearance on the Jackson Park Theatre.

Q. Now, you had that conversation, did you, in the succeeding years, the same kind of a conversation?

Mr. Adcock: Are you asking about Paramount?

Mr. McConnell: Yes, I am asking about Paramount. With Paramount?

492 The Witness: A. We did.

Q. And was Mr. Smith the man you talked to on each occasion with Paramount?

A. Yes, we talked with Gene Smith for two seasons, I believe, if my memory serves.

Q. Who else did you talk to from Paramount?

A. Well, in subsequent years there was Harold Wirthwein. We talked to Jim Donohue one year.

Q. And who else?

A. And there was one toward—a little later on, a Ben Elrod.

Q. Well, now, were you able to talk to anybody from Paramount at any time about a run for the Jackson Park Theatre prior to the time that the circuits had been sold?

A. No, we were not able to discuss any negotiations for the purchase.

Q. Well, did you try?

A. We did try.

Q. With whom?

A. With the various salesmen.

Q. That you have mentioned?

A. Yes, sir.

Q. And what did they tell you?

A. Well, they told us that they had not sold the circuits, yet; they had not got the word to go out and
493 sell the subsequent runs, and when they got that word that they would call on us.

Q. Did they say whether or not they would negotiate with you for a run for the Jackson Park product?

A. They said they would call on us after they got the word from the front office to go out and sell subsequent runs.

Q. Well, did they refuse to negotiate with you about a run for the Jackson Park prior to the time that the circuits were sold?

A. They would not talk to us at all about that.

Q. Now, who else did you talk to from Vitagraph? You testified to the man who is now dead. Who else did you talk to from Vitagraph?

A. Well, we talked with Johnnie Sokley, Harry Mandel, Teddy Mendelson, Sid Rose, and Tom Gilliam one year.

Q. And was the subject of conversation about the same as what you have stated here?

A. The subject was to try to negotiate for purchases of film in C week release.

Q. You never were able to negotiate it, is that it?

A. Never were able to.

Q. What did they tell you? Did they give you a
494 reason why you could not?

A. That the Jeffery held clearance on the Jackson Park.

Q. Well, now, clearance is re-negotiated each buying season, is it not?

A. It is supposed to be.

Q. Now we have that conversation with Paramount and Vitagraph. How about Loew's? Did you have any talk with anybody from Loew's?

A. Yes, there was Teddy Mendelson at Loew's and there was a Julian King.

Q. Now, what years did you talk to Teddy Mendelson?

A. Well, for all the time prior to the time he left Loew's and went to Warner Bros., which I believe the last season we talked with him was possibly 1938, was Teddy Mendelson at Loew's. After that it was Julian King for a couple of years and then Howard Beck I think came in on the last year, around '40, around that.

Q. You talked to all those gentlemen, did you?

A. Yes, sir, I did. We did.

Q. And in substance the conversation was the same as what you have testified to, is that correct?

A. That is correct.

495 Q. Now, who did you talk to from RKO?

A. Well, there was a Ray Nolan there at the time, and later on—

Q. What time?

A. Back in 1936, 1937, Joe Cozzi and Jack Osserman.

Q. That is all you talked to from RKO?

A. RKO.

Q. Well, let us fix the times when those people were there.

A. Well, from 1936 to '40, from 1936 to '40.

Q. And which men?

A. The order was first Osserman and Cozzi.

Q. And was the substance of your conversation with those men the same?

A. Always attempting to—

Q. As you have already related?

A. I was attempting to improve the run of the Jackson Park Theatre.

Q. Now, at Twentieth Century-Fox, who did you talk so?

A. It was Harold Loeb there all the time up until about '41, I believe it was, Mr. Salkin and I went in to see Mr. Eckhardt.

Q. Went in to see who?

A. Mr. Eckhardt.

Q. Clyde Eckhardt?

496 A. Clyde Eckhardt.

Q. Was the substance of your conversation with Twentieth Century-Fox the same as the conversation you have related?

A. It was the very same.

Q. Now, you say you went in to see Mr. Clyde Eckhardt. When was that?

A. I believe it was in 1942.

Q. What part of the year, do you remember?

A. In the summer, oh, possibly July. Went in to see him with reference to buying some more pictures in C week release.

Q. Who was present then?

A. Mr. Salkin.

Q. And who else?

A. Mr. Eckhardt and myself.

Q. All right. What was said in that conversation?

A. Well, Mr. Eckhardt advised us that he had no more pictures to sell us in C week of release and we asked him if he would let us know if there were going to be any more that would be available to the Jackson Park to play in C week, like "How Green Was My Valley," and he said, "No, I don't think there will be any more," and he related the story to me that that was, well, words like an
497 unfortunate affair, that he had been called on the carpet for having given the Jackson Park "How Green Was My Valley" in the C week of release. From that he reminded us we had played it ahead of the Maryland.

Q. Did he say who called him on the carpet?

A. He said "downtown."

Q. Well, did you try to buy a C week of release from Clyde Eckhardt?

A. We did.

Q. What did he say?

A. Could not sell us, did not have any—did not have any product available for the Jackson Park in C week of release.

Q. You say you had gotten some. Had you gotten anything except "How Green Was My Valley"?

A. A number of years back we got a Will Rogers picture from Twentieth Century-Fox.

Q. That is the only thing you got?

A. That is about the only thing.

Q. There was some mention made of a picture "Reap The Wild Wind." Do you know where the Jackson Park played that picture?

A. They played that with C week of release, from
498 Paramount.

Q. How far back was that?

A. A year and a half, two years ago, I just don't recall.

Q. They paid C week rental on it, did they?

A. Well, it was a percentage picture.
Q. Played it on percentage?
A. Yes, sir.
Q. Did you participate in any way in any conversations with Mr. Coston with reference to the Hamilton Theatre?
A. One day up in Mr. Halperin's office I witnessed a conversation that Mr. Salkin—that Mr. Coston had with Mr. Salkin.
Q. When was that?
A. It was, I believe it was about July, 1942.
Q. And who was there?
A. Well, Mr. Halperin was there, Mr. Salkin, Mr. Coston and myself.
Q. What was said?
A. Mr. Salkin asked Mr. Coston what he had learned about the Jackson Park playing position, to which Mr. Coston replied that there was nothing doing, that he had seen John and that he would not allow the Jeffery to
499 move into B week.
Q. Do you know who "John" was?
A. John Balaban.
Q. You say you are a booker of motion picture films?
A. Buyer and booker.
Q. What is the work of a booker? What does a booker do?
A. Well, he books the pictures to the theatres he represents, reviews the pictures; he keeps track of the pictures as they come out of the Loop to see where they will fall in the weeks of release and—there are a thousand and one different details.
Q. You testified you were associated with Allied, you were a booker for Allied?
A. I am.
Q. Now, who pays your fee for the booking you do?
A. Allied Theatres pay me. I am an employee of the Allied Theatres.
Q. On a salary?
A. On a salary.
Q. And do they charge the individual theatre for your services?
A. They charge the individual theatre a service
500 charge, a weekly service charge.
Q. For the work which you do in booking the picture?

A. That is right, for the service which the office performs. There is other people performing service to the theatres besides myself.

Mr. McConnell: You may cross-examine.

The Court: Suppose we take our recess at this time, then. Ten minutes.

(A recess was taken, after which the following further proceedings were had:)

Mr. Seeley: You were through with direct, weren't you?

Mr. McConnell: Yes, sir.

Mr. Seeley: I have no cross.

The Court: How about you, Mr. O'Brien?

Mr. O'Brien: Just a couple of questions.

501 *Cross-Examination by Mr. O'Brien.*

Q. Are you a member of the Board of Directors of Allied?

A. I am not.

Q. And never have been?

A. Never have been.

Q. And you are not an officer?

A. I am not an officer.

Q. What different services does Allied render for its members?

A. You mean pertaining to the buying and booking department?

Q. Any kind of services.

A. Well, we purchase the films for the theatres, do their booking, keep a cut off of their playing dates, keep their contracts, that is for their playing position in the contracts, the clearance in the contract, furnish them with a routine sheet showing their program for the week, and review the pictures for them and keep them advised on matters pertaining to the operation of a motion picture theatre.

Q. And is a fee charged by Allied for the different service?

502 A. There is a weekly office fee for the buying and booking members and there is an annual fee for the members of the Allied Association, based upon seating capacity.

Q. And at the times which you mentioned was the Jackson Park paying the weekly fee for the buying and booking service?

A. Yes, sir.

Q. How many members of that type do you have at the present time?

A. There is approximately sixty theatres in the buying and booking circuit at this time.

Q. And about how many back in—well, how long has Allied been in existence? Since 1929?

A. Allied has been in existence going on fifteen years now, the Allied Theatres of Illinois, Inc.

Q. And there, then, about 1929, 1930, how many members of this type did it have?

A. Well, not until 1933 did Allied have a buying and booking service.

Q. I see.

A. Mr. Aaron Saperstein, who was then president, took over what Mr. Floyd Brockell had had.

Q. Oh, yes, that is right.

503 A. Mr. Brockell was killed in 1933 and at that time Mr. Aaron Saperstein took over Mr. Brockell's business.

Q. Mr. Saperstein was the president?

A. He was then the president of the Allied.

Q. During his lifetime?

A. Well, not during his lifetime,—up until July, 1938, when he passed away.

Q. That is 1938?

A. In the years previous to that, from the Allied inception.

Q. Yes. He died in 1938?

A. Yes, sir, he did.

Mr. O'Brien: That is all.

Cross-Examination by Mr. Adcock.

Q. How long have you had sixty members or so in your booking circuit or buying circuit?

A. Well, the number of approximately sixty in the last six months.

Q. Prior to July 28th, 1938, did you have a buying and booking circuit?

A. Yes, sir.

Q. That is the Allied buying and booking circuit?

504 A. It was part of the Allied organization, yes, sir.

Q. And how many members were there, oh, at dif-

ferent times, five or six years prior to that, approximately?

A. Approximately twenty-five up to about November of 1941.

Q. And then it increased quite considerably?

A. It did, sir.

Q. Prior to 1941, what service did you render to those members?

A. We assisted those members in the buying and did their booking, kept cut-offs, record of their playing dates, examined contracts for them.

Q. When you say up to 1941, your services consisted in actually negotiating the contracts?

A. It had all to do with the negotiating of contracts.

Q. Then prior to 1941, outside of the booking, you gave assistance in connection with their buying. Would you state just in a general way what that assistance consisted of?

A. Well, we sat in—I sat in with the distributor, the representatives in negotiating for the purchase of film.

Q. Did you have anything to do during that period
505 with examining the contracts that were entered into between the members and distributors with reference to the licensing of films?

A. I did, sir.

Q. Did you during that period, say from about 1936 on, always see to it before Salkin signed the film contract that it provided first week of general release for Jackson Park and provided that Lex should play in the same week and Jackson Park should have clearance over Hamilton and Kimbark?

A. Right.

Q. Prior to 1942, July, 1942, did you have conversations with anybody with respect to Jackson Park moving to C week, Jeffery to B week, and Hamilton to first week?

A. I had received a call from Alex Halperin one day—

Q. I am not asking you to state the conversation, but did you have a conversation?

A. I did have a conversation with Mr. Alex Halperin.

Q. And over what period of time?

A. I would say it was a year and a half, two years.

Q. Did it begin about February, 1940?

A. Approximately at that time.

506 Q. In the event that this change of position took

place, that is, it was arranged that these theatres should move up, the ones I have mentioned, did you have any conversations with anybody with respect to any change of playing position of any other theatres in that neighborhood?

A. No, sir.

Q. You testified, I believe, that you had conversations with distributors, naming agents of distributors, you and Mr. Salkin, with respect to Jackson Park moving into C week playing position?

A. We did.

Q. Did you discuss at that time, with any of these distributors' agents, what would happen with reference to the playing position of any other theatre than Jackson Park if it were moved to C week?

A. There was no discussion.

507 Q. From February, 1940, to July 6, let us say, of 1942, did you have any discussion with any distributor agents with respect to a plan of moving Jackson Park to C week, Jeffery to B week, and Hamilton to first week?

A. None whatsoever, except some of the bookers on receipt of dates of the Hamilton in the first week of release, called me to find out if it was O. K. by Hamilton.

Q. In the first week?

A. The first week.

Q. But you had no discussion with anybody representing a distributor with respect to Jeffery moving to B week, and at the same time Jackson Park moving to C week?

A. Not any with the distributor representatives.

Q. You were not present at any conversation when that was discussed by anybody else, by any distributor agent?

A. With no distributor.

Q. Do you remember that in the year 1936, I think about December 4, 1936, Jackson Park entered into contracts, two contracts, with Paramount for the production of the season 1936-37, and also for the season 1937-1938?

508 A. I recall having visited Paramount with Mr. Salkin and discussed the proposition of negotiating for C week of release with Gene Smith for Paramount pictures.

Q. Yes.

A. It is not clear in my mind at the moment that we did negotiate for first week at that time.

Q. I show you an exhibit, Plaintiffs' Exhibit 22, which is a folder containing certain contracts and other documents relating to '36-'37 season, and ask you to look through that and see if you find the contract there. Can you find the contract? You are more familiar with them than I am, relating to the 1937-38 season in that folder?

A. This is the contract for the product of '36-'37.

Q. I am asking about the 1937-38, S-9.

A. No; no contract for S-9.

Q. I want to call your attention to this folder here that I have in my hand, which covers 1937-38 season, and is Exhibit 14, and the contract which was entered into on December 4, 1936, and S-9 product. Was not that the product for the season 1937-38?

A. This is the 1937-38 contract.

509 Q. Does that refresh your recollection as to that transaction in 1936, covering two seasons' product?

A. This one covers one season, S-9, 1937-38.

Q. But it was entered into in 1936, was it not?

A. It was entered into October 4, 1936,—no, December 4.

Q. December 4?

A. 1936.

Q. That is almost a year prior to the buying season for '37-'38 season, wasn't it?

A. There has been some blocking out, some typing out here in 1937. S-9, 1937-38 was inserted.

Q. Yes.

A. All right.

Q. That does not refresh your recollection about it at all?

A. No, it does not help me any.

Mr. Adcock: I see. I think that is all, your Honor.

The Court: All right. Any redirect?

Mr. McConnell: Just one or two questions.

510 *Redirect Examination by Mr. McConnell.*

Q. Now, Mr. Mager, your buying service has only been in existence about fourteen months in Allied?

A. Well, the method under which we are buying now has been in effect going on two years. We have all to do

with the buying now. Mr. Kirsch is the man in charge of the buying. I give him my assistance.

Q. Now, for the Jackson Park, you only acted as a booker?

Mr. O'Brien: I object to the leading question.

The Court: Objection sustained.

Mr. McConnell: Q. In what capacity did you act for the Jackson Park?

A. I acted as booker and assisted Mr. Salkin in the buying.

Q. Did Mr. Salkin do his own buying?

A. He signed the buying contract.

Q. And was present at all negotiations?

A. Positively.

Mr. McConnell: That is all.

The Court: That is all, Mr. Magef.

(Witness excused.)

511 The Court: Call your next witness.

Mr. McConnell: Mr. Kirsch, please.

JACK KIRSCH, a witness produced on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please?

A. Jack Kirsch.

Q. Where do you live, Mr. Kirsch?

A. 5547 West Jackson Boulevard.

Q. What is your business or occupation?

A. I am president of the Allied Theatres of Illinois, and also an exhibitor, theatre owner.

Q. What theatres do you own?

A. I own the Twentieth Century Theatre, 3538 West Roosevelt Roard; Gold Theatre, 3411 West Roosevelt Road; Villa Theatre, 320 South Halsted Street; Circle Theatre, 3213 West Roosevelt Road; Lexington Theatre, 1715 South Pulaski Avenue.

Q. How long have you been engaged in the motion picture industry in one manner or other?

512 A. Since the year 1930.

Q. You have been subpoenaed as a witness in this case, have you not?

A. Yes, sir.

Q. And you are appearing here in response to the subpoena?

A. Yes, sir.

Q. From your knowledge of the business here in Chicago and the motion picture industry, can you state whether or not it is possible for an independent exhibitor of motion pictures to negotiate for a run prior to the time that the Balaban & Katz and Warner Bros. circuits have purchased their run?

Mr. Seeley: I object to the question on the ground that it is not a proper subject for expert testimony. It is a question of fact upon which the jury can draw inference from the fact.

The Court: That is pretty near the heart of this lawsuit, isn't it? The objection is sustained.

Mr. McConnell: Q. Have you tried to negotiate at any time for a run for your theatres?

A. I don't quite understand what you mean by that, Mr. McConnell.

Q. Have you tried to negotiate at any time with any of the distributors of motion picture film here in Chi-
513 cago, for a playing position ahead of other Balaban & Katz and Warner Bros. theatres?

A. No, sir.

Q. You testified in a deposition which was taken by the plaintiffs in this case, did you not?

A. Yes, sir.

Q. As the plaintiffs' witness?

A. Yes, sir.

Q. And on cross—

Mr. Adcock: You don't mean that, do you?

Mr. McConnell: Defendants. I am wrong. On behalf of the defendants in the case.

Q. You know who they are, do you not?

A. Yes, sir.

Q. And on cross-examination at that deposition, you were asked whether or not it was possible to negotiate for a run prior to the circuits. Do you recall such question being asked you?

Mr. Seeley: I object to that question.

The Court: Objection sustained.

Mr. McConnell: Q. How long has your buying for your members of Allied been in existence?

A. Well, when I took office, there was a booking and buying office there, which was in operation. Approximately a year and a half ago, I was asked to repre-
514 sent the exhibitors in buying all motion pictures.

Q. Prior to that time, you had booking service, that was all?

A. Yes, sir.

Mr. O'Brien: I object to the leading question. Let him state what the service was prior to that time.

The Court: It was leading, but he has answered.

Mr. McConnell: Q. Now, you did have some conversation, did you not, with Mr. Coston with reference to the Hamilton Theatre's playing position, with reference to the Jackson Park?

A. Nothing in reference to the Hamilton, but in reference to the Jackson Park.

Q. When was that conversation?

A. Approximately two years ago.

Q. What was said there?

A. Mr. Salkin came to my office and was contemplating on filing a suit for a better playing position. I asked him if he would wait and I would find out what I could do to stop any suit of any kind. I talked to Mr. Coston, who is just a few doors from my office, and asked him if there
was anything we could do about bettering the play-
515 ing position of Jackson Park. He told me it was agreeable with him that Jackson part play in a better playing position, but that he had spoken to some one at Balaban & Katz's office, and they refused to allow Jeffery to have a better playing position.

Q. How about Jackson Park? What did he say about that?

A. It was agreeable with him.

Q. What did Balaban & Katz's office say about Jackson Park? Anything?

A. Nothing.

Mr. McConnell: You may cross-examine.

Cross Examination by Mr. Adcock.

Q. His statement was that Balaban & Katz objected to the Jeffery moving to B week, is that right?

A. Yes, sir.

Q. And you understood the arrangement was that Jeffery was to move to B week, and Jackson Park to C week?

A. That is the way Mr. Coston put it.

Q. But Balaban & Katz objected to the Jeffery 516 moving to B week?

A. Yes, sir.

Mr. Adock: That is all.

Cross-Examination by Mr. Seeley.

Q. In mentioning from time to time in this case a theatre called the Lexington, which is near the plaintiffs' theatre, that is a different theatre from your Lexington Theatre, is it not?

A. Yes. There happens to be two Lexingtons in Chicago. We changed ours to Lex. We cut it down.

Mr. Seeley: That is all.

Cross-Examination by Mr. O'Brien.

Q. Mr. Kirsch, prior to the institution of this new method of playing, which I think you said took place two and a half years ago, did Allied furnish buying service to some of its members?

A. Yes, sir.

Q. You agreed with Mr. Mager, then,—you were here when he testified?

A. Yes, sir.

Q. But you do not agree with Mr. Mager in a period of a year and a half ago,—you did not furnish any buy- 517 ing service?

The Witness: Will you repeat that, please?

Mr. O'Brien: Read the question.

(Question read by reporter.)

Mr. McConnell: I object to the form of the question.

The Court: Objection sustained.

Mr. O'Brien: Q. What was the difference between your buying service in the beginning and now?

A. At the beginning, each individual exhibitors would sit down with a salesman and negotiate for their particular theatre. Under today's system, independent exhibitors are banded together, and we now buy as a group: in other words, as a wholesaler or retailer.

Q. When you say "buy", you mean you license?

A. Negotiate or license.

Q. Yes. You don't buy like you would buy a hat, do you?

A. No, sir; like rental for the period of time of leasing.

Q. Your Twentieth Century Theatre, is that on Roosevelt Road?

A. Yes, sir.

Q. Is it opposite the Central Park?

518 A. Yes, sir.

Q. For how long has that been true?

A. Sir?

Q. For how long has that been true?

The Court: Has what been true?

Mr. O'Brien: That the theatre has been opposite the Central Park at Roosevelt Road.

The Witness: A. Well, that is pretty hard for me to say. I got in there in 1936, approximately fourteen years. I think the theatre must be about twenty years old.

Q. During any of that time, was Balaban & Katz operating the Central Park?

A. Yes, sir.

Q. And at that time that it was so operating, the Central Park, do you remember a Vitagraph furnishing both Balaban & Katz and Twentieth Century product, a split product?

A. Yes, sir, excepting in one year.

Mr. O'Brien: That is all.

Mr. Adcock: There is one other question, if the Court please.

519 *Further Cross-Examination by Mr Adcock.*

Q. Was anybody present at the time you had this conversation with Mr. Coston that you described in answer to my question?

A. No, I think I was there alone.

Q. And you so testified in the deposition examination in my office, didn't you?

A. Yes, sir.

Q. And Mr. Salkin was present at that time?

A. I said I was not sure.

Q. But he was present at the taking of the deposition?

A. Yes, sir.

Mr. Adcock: That is all.

The Court: Is that all with this witness?

Mr. McConnell: That is all.

The Court: You may step down, Mr. Kirsch.

(Witness excused.)

520 Mr. McConnell: If the Court please, I have some depositions here that I want to read into evidence, depositions taken of different defendants' employees or officers. I would like to do that by having Mr. Korfist sit on the stand and read the answers to the questions as I ask them, if that is an acceptable procedure.

The Court: Have you gentlemen copies of the depositions?

Mr. Seeley: I have not mine here.

Mr. O'Brien: I object to it, unless there is some particular sequence.

Mr. McConnell: I have no other witness here now. I thought they would last longer.

The Court: How many more witnesses do you have?

Mr. McConnell: I have three.

The Court: How long will they take?

Mr. McConnell: A day and a half.

The Court: How long will your depositions take?

Mr. McConnell: Well, the depositions, I don't know how long it will take to read them. It took us long enough to get them. I think it would take half a day to read them.

The Court: Well, your opponents say they don't
521 have their copies here. I don't suppose there is much to do about it except take an adjournment. We will take an adjournment until tomorrow morning at 10:30.

There will be no session tomorrow afternoon. I will tell the jury that now, so that any arrangements they want to make will be all right. There will be no session on Saturday. Next week we will work Tuesday, despite the fact that it is Washington's Birthday.

The jury may be excused until 10:30 tomorrow.

(Whereupon the trial of the above entitled case was continued to Friday, February 18, 1944, at the hour of 10:30 o'clock a. m.)

522 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—4525) * *

Before Igoe, J., and Jury.
Friday, February 18th, 1944,
10:30 o'clock A. M.

The Court met pursuant to adjournment.

Present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Seeley,
Mr. O'Brien.

(And thereupon the following proceedings were had out of the presence and hearing of the jury:)

Mr. O'Brien: If the Court please, I have a motion on behalf of the defendants whom I represent, asking the Court to permit the jury, under the Court's instruc-
523 tion, to view the theatres named in the complaint, including the Hamilton, and the locations, the immediate locations, for the purpose of enabling them better to understand the evidence. I have authority—

The Court: Is there any objection to that?

Mr. O'Brien: (Continuing:)—and I will give it to you quite briefly.

The Court: Any objection to that?

Mr. McConnell: I don't think so.

Mr. O'Brien: Tomorrow is an open day, or even this afternoon. I think, as a practical matter, we could arrange for appropriate transportation. We could advise the houses to permit the people to come in.

The Court: When do you want to do that, this afternoon?

Mr. McConnell: I don't think we ought—

Mr. O'Brien: There is no need for counsel to be present.

Mr. McConnell: Counsel will have to be present, of course.

Mr. O'Brien: Either way. I think one, two counsel all

told would be enough, and perhaps the Marshal should come along.

The Court: What were you going to say?

524 Mr. O'Brien: I am sorry.

Mr. McConnell: If the Court, please, as you know, there is a burden on counsel in a case of this kind, in the preparation, and so forth. We are getting to the end of our case. I need every single minute. I haven't any help, and it is a great inconvenience to me to have to go out and view these theaters prior to the time we get through with the plaintiffs' case. After that I have no objection to counsel's motion, but I need all of my time in preparation.

Mr. O'Brien: Of course, we have, too, all of us, worked very hard on this.

The Court: You are not going to work this afternoon, you are not going to work tomorrow in this case, and not going to work on Sunday. Can you go out there this afternoon? How can you get out there?

Mr. O'Brien: We can get a conveyance of some sort.

Mr. Seeley: Probably charter a small bus from the Chicago Motor Coach.

The Court: Let us go out this afternoon. Either the Clerk or Marshal will have to go along with you.

Mr. O'Brien: Yes, sir. May we have a minute order to that effect?

The Court: All right. Well, let us take it up with 525 the jury when they come in.

Mr. O'Brien: Yes.

Mr. McConnell: We have told the jury they could have the afternoon off.

The Court: Now, first you said it was all right with you, and now you want to make several objections. Personally, I do not see any objection.

Mr. McConnell: I haven't any objection to the motion.

The Court: Oh. All right. I am not going to let them go out there on a court day, because I am anxious to finish this case.

Mr. O'Brien: It is this afternoon or tomorrow afternoon.

Mr. McConnell: Sunday would be all right.

The Court: Let us do what I suggest. Let's get the jury in.

Mr. O'Brien: Of course, you have this problem with the

folks who are out of town. They may well wish to be with their families during Sunday. I don't know.

The Court: I have never had much trouble with these juries by letting them decide such a thing as that. Let us get them in.

Mr. O'Brien: O. K.

526 (And thereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: Good morning, ladies and gentlemen.

The Jurors: Good morning.

The Court: The suggestion has been made by counsel that you jurors ought to go out and view these theatres that have been mentioned in this lawsuit. The question was when you could go out there, whether this afternoon or tomorrow. Which would you prefer? You are all in here today. They can arrange transportation, and perhaps go out there this afternoon and have it all over shortly. Would that be more agreeable than tomorrow?

The Jurors: Yes, sir.

The Court: All right. Then you folks get busy and—

Mr. O'Brien: There are more than two theatres, your Honor, but they are all in the same general neighborhood.

The Court: Yes; but we have to have transportation for these folks.

Mr. O'Brien: That is right. I think your Honor said two theatres. I just want it understood that there are probably five or six theatres.

The Court: They are all in the same general neigh-
527 borhood out there, the southeastern section of the city.

Mr. O'Brien: Yes, sir.

The Court: And when would you want to go out there, then?

Mr. McConnell: If we are going this afternoon, I do not think time is material to me. It will probably take most of the afternoon. I suppose the earlier we get started the better off we are.

The Court: Very well.

Mr. McConnell: I would suggest two o'clock.

The Court: Well, then, I will make this suggestion, to both you and your associates, that when we finish here, take our recess at noon, you folks will provide the noonday meal for the jury, and then arrange to have the bus meet them and take them out there.

Mr. O'Brien: All right, sir.

The Court: That will be a joint obligation on the part of both sides.

Mr. O'Brien: Very well.

The Court: All right. You were going to have another witness?

Mr. McConnell: Yes, your Honor. Mr. Leo Salkin.

528 LEO ROBERT SALKIN, a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please?

A. Leo Robert Salkin, S-a-l-k-i-n.

Q. And where do you live, Mr. Salkin?

A. 4846½ Drexel Boulevard.

Q. You have been subpoenaed as a witness in this case, have you not?

A. I have.

Q. And you appear here in response to that subpoena?

A. That is right.

Q. What is your present business or occupation?

A. I am a salesman employed by the William Morris Theatrical Agency, an Illinois Corporation, in the talent business, bookers of talent.

Q. Generally, what is that business?

A. Well, I book acts in theatres, hotels, and night clubs, radio and pictures.

Q. And will you explain what booking an act is?

A. Consummating contracts for engagements with the various clients that I do business with.

529 Q. You do business with Balaban & Katz Corporation?

A. Yes, I do.

Q. And in what amount, generally; how much business do you have with them in a year?

A. Well, offhanded, between the Chicago office and the New York office, possibly a couple of hundred thousand dollars worth or more a year.

Q. And they are a valued client and customer of your organization, is that correct?

A. That is right.

Q. Does that affect the question of whether or not you are a willing witness in this case?

Mr. Seeley: I object.

The Court: Objection sustained.

Mr. McConnell: Q. Well, are you a willing witness?

Mr. Seeley: I object.

Mr. Adcock: I object.

The Court: Objection sustained. He has not indicated he is unwilling, has he?

Mr. McConnell: Q. Are you an unwilling witness in this case?

Mr. Seeley: I object to that.

The Court: What is the point about these questions, Mr. McConnell?

530 Mr. McConnell: If the Court please, under the rules, if the witness is not a willing witness, for any reason, I have a right to ask him leading questions. I want to show the situation.

The Court: Show that he is an unwilling witness.

Mr. McConnell: I am asking him now. He stated that to me. I have had to subpoena him here.

Mr. O'Brien: That can only appear as he is interrogated.

The Court: Hadn't you talked with him to ascertain whether he is willing or unwilling?

Mr. McConnell: Yes. I know he is unwilling, your Honor.

The Court: Then you may proceed, under the rules; but I don't know why you are asking to go through all these questions.

Mr. Seeley: If I understand the term "unwilling" witness does not mean simply a man who would rather not be called into the case; it means who is reluctant to tell the truth. I do not think there is any showing here that Mr. Leo Salkin is reluctant to tell the truth, or to answer questions.

Mr. McConnell: I don't understand that it is that narrow.

531 The Court: Counsel states that this man, to him, is an unwilling witness. I am willing that you proceed under the rules.

Mr. Seeley: Let us avoid, then, the necessity of making repeated objections to the leading nature of the questions. Can we have a standing objection?

The Court: Yes, sir.

Mr. Seeley: Thank you.

The Court: I am doing this on Mr. McConnell's statement that this witness is an unwilling witness.

Mr. McConnell: This witness told me he can not appear here without prejudice to his business; and he is an unwilling witness.

Mr. Seeley: I object to that statement, and ask that the jury be instructed to disregard it.

The Court: The jury will disregard the statement; and you proceed now to ask your questions. Your objections will be noted.

Mr. McConnell: Q. How long have you been connected in any way with the motion picture industry?

A. About 35 years.

Q. Do you know the Jackson Park Theatre?

A. Yes, I do.

Q. And were you ever engaged as a Manager of 532 that Theatre?

A. Yes, I was.

Q. And during what period of time?

A. From January of 1928 to April of 1933.

Q. What were your duties there when you were Manager?

Mr. Seeley: Pardon me. What Theatre is this?

Mr. McConnell: The Jackson Park.

A. I operated the Theatre, bought the film, and had complete supervision of all operation.

Mr. McConnell: You stated 1933. Did you mean 1933?

A. 1933, yes. No, 1923.

Q. 1923?

A. 1923 I meant there.

Mr. Seeley: Then the beginning date was—

The Witness: 1928 to 1933.

Mr. McConnell: 1918.

The Witness: 1918 to 1923. I was there five years.

Mr. McConnell: Q. When you first went to the Jackson Park—let us find out exactly, if you know, when you went?

A. I believe it was around January 5th of 1918, and I left there in April of 1923.

Q. And when you first went to the Jackson Park Theatre, at what time did the Jackson Park Theatre play pictures after the Loop?

A. 25 years ago, but if my memory serves me right,
533 the Loop finished playing the picture on Sunday, and I played it on Monday.

Q. Now, what theatres were in competition with the Jackson Park Theatre when you were there?

A. The Lexington, on 63rd Street. You are talking about when I first went there?

Q. When you first went there?

A. Yes. The Lexington on 63rd Street, the Drexel on 63rd Street, and the DeLuxe on 63rd Street; and then there was the Kimbark at 63rd and Kimbark, and the Hamilton at 71st and Jeffery.

Q. Do you recall a theatre called the Woodlawn Theatre?

A. The Woodlawn, I believe, was built a year, approximately a year or two years after I went to the Jackson Park.

Q. Now, were there any other theatres there?

A. Not that I recall; might have been some smaller theatres, but I don't recall.

Q. Do you recall the Tivoli being built about that time?

A. No. The Tivoli was built I think in about '22.

Q. But that was while you were still Manager?

A. While I was still Manager.

Q. Now, how did you play pictures; that is, what
534 was the run of your pictures as compared with those theatres that you have mentioned?

A. Compared to the Drexel and DeLuxe and those theatres?

Q. Yes.

A. I played day and date with the Lexington, I believe, and the Drexel and the DeLuxe and the Kimbark repeated on me, and the Hamilton repeated on me in the following week.

Q. Did you play any product ahead of the Woodlawn Theatre?

A. The Woodlawn Theatre was opened in the middle of the buying season, and when the Theatre first opened I had contracts on those pictures, and I gave them some of my pictures to open because he didn't have any major product, and I gave him some of my pictures.

Q. And after the Theatre was opened, did you play—

A. The following buying season, because of the fact

that he played so few pictures, I played a few pictures after him, and a lot of them that he did not play, and a lot of them clear in the territory.

Q. When you say "clear in the territory" you mean ahead of the other theatres?

535 A. That is right.

Q. Now, in those days did you buy pictures by groups?

A. Yes; we bought them by groups.

Q. Was there a system of release of pictures in existence at that time?

A. Well, at that particular time there were no big down town theatres, they were all small theatres, and the outlying, what we call today the subsequent runs, played them immediately the day following the down town runs.

Q. There was no period where—waiting time, between the Loop and the outlying theatres?

A. No, there was not, at that time.

Q. What was the nature of the neighborhood in which the Jackson Park was located at the time that you were there?

A. Well, from my observation the neighborhood was a new neighborhood out there, and it was not half built up like it is today, I don't think, from what I see today, as compared to when I left there in 1923; twice as many, looks like twice as many buildings out there.

Q. You would say that it was not as well built up as it is today?

536 A. No.

Q. There wasn't as much business there then, is that right?

A. I don't know about business. I know there were not as many people there.

Q. Not as many people from which patronage could be drawn to your theatre, is that correct?

A. I would assume so, if there are people there.

Q. Now, during the time that you were Manager of the Jackson Park Theatre was there a lease from the owner of the Theatre to the Theatre?

A. That is right.

Mr. Seeley: I object to that as not the best evidence, and immaterial.

The Court: Of course it is not the best evidence.

Mr. McConnell: I have stated to counsel that we have

made a complete search for all the records of the old Theatre. Of course they were not our records. They were the records of the prior owner. We can not find them, and there are no earlier records. I have no other evidence. I have stated that to counsel.

Mr. Seeley: I will take Mr. McConnell's word for that fact, as far as that goes.

Mr. Adcock: Of what materiality would it be, a 537 lease from himself to himself?

Mr. McConnell: I am going to show the earnings. The only way I can show it is to show what was paid in the way of profits and paid on a lease. That is what I am going into now.

Mr. Adcock: That is too remote. It is not material to any issue in this case, back in 19—twenty years ago or more, and it can not be material. Things are entirely different. Conditions are different, the operation, and so forth.

The Court: How is that material as to the present issue?

Mr. McConnell: Well, the earnings of this Theatre and the historical documents, under a system in which he was doing business, as to what that Theatre earned in those days, where he was operating on a system where he could get the pictures, is certainly material here to show what he earned in that theatre, in that particular Theatre.

The Court: Twenty years ago?

Mr. McConnell: He had the same competition, except for these later built theatres.

Mr. O'Brien: The jury can judge the evidence on that. The fact is that at that time none of these theatres 538 were in there, and it would be highly prejudicial: there would be no basis for comparing the conditions.

The Court: I am going to sustain the objection.

Mr. O'Brien: Clear afield.

Mr. McConnell: Q. Under what basis did you act as Manager, as far as your financial arrangement with the owner was concerned?

Mr. Seeley: I object to that as immaterial.

The Court: He may answer that.

A. I received $70 a week salary, and ten per cent of the profit.

Mr. McConnell: Q. And what did your profits, ten per cent, amount to?

Mr. O'Brien: The same objection.

Mr. Adcock: For the same reason.

Mr. O'Brien: The same thing.

The Court: Mr. McConnell, when you go back that far with the conditions as they then existed, compared with the conditions today, does that make material this sort of evidence?

Mr. McConnell: Well, if the Court please, they have gone back into the early history of this, in their cross-examination. We have a plant there, and the question is how much money can that plant take in when it gets patrons
539 into that theatre? Now, here is a man who can tell us, from his actual experience, how much money came into that particular theatre when it could get the patrons. Now, it seems to me that is very material.

The Court: Going back twenty years, I fail to see how that is material to what is involved here today.

Mr. O'Brien: Twenty-five years ago.

Mr. McConnell: The question is how much does the Theatre, the Jackson Park Theatre, take in when it gets pictures? That is our issue.

The Court: What it took in twenty years ago I hold is not material to what it takes in today, what it could take in today.

Mr. McConnell: I want to make an offer of proof.

The Court: Well, all right, make an offer.

Mr. McConnell: Well, we will reserve it, then, until we can make it outside the presence of the jury.

The Court: Yes.

Mr. McConnell: Q. Mr. Salkin, after you had finished your employment with the Jackson Park Theatre, what was your next occupation?

A. I went into theatre operation for myself.

Q. And how long were you so engaged?

A. About two years.

540 Q. And after that what was your business or occupation?

A. I operated a night club.

Q. And subsequent to that time were you employed as a booker and purchaser of motion picture films for the Marbro and Granada Theatres?

A. Yes, I was; after I sold the night club.

Q. And what years was that?

A. I believe that was from about the middle of 1924

to about 1928 or '29. I could tell better if I knew when Balaban & Katz took over the Granada and Marbro Theatres. That is when I discontinued my—

Q. If I told you that the Granada Theatre was taken over on December 6th, 1929, taken over by Balaban & Katz, would that refresh your recollection?

A. Yes. That is when I was with Marx Brothers, until the middle—from the middle of 1924 until December of 1929.

Q. Can you tell us briefly what sort of theatres the Granada and the Marbo Theatres were?

Mr. Seeley: I don't see the materiality of that; a different section of the City, and far removed.

The Court: What is the materiality of that?

Mr. McConnell: The materiality of that evidence, if the Court please, is that here were two fine de luxe thea-
541 tres, which cost several millions of dollars apiece to build, and I am going to attempt to show by this witness that when they came to buy pictures they were blocked by the defendants in this case.

The Court: At that time—

Mr. Seeley: Are we trying another lawsuit here?

Mr. McConnell: No, it is not another lawsuit. It is the same situation, of the Balaban & Katz organization preventing these two fine theatres from acquiring pictures.

The Court: Well, your client, as I understand, came in this picture in what year, 1937?

Mr. McConnell: '36.

The Court: '36.

Mr. McConnell: But under the authorities we have the right to show the operation of what is going on here as far back as necessary to bring the proof of conspiracy and combination into it.

The Court: Even though your people just went into business in 1936?

Mr. McConnell: Yes.

The Court: Or 1937?

Mr. McConnell: Yes, your Honor. It is a continuing conspiracy and so alleged in the complaint.

542 The Court: Well, how can it be a continuing conspiracy against them when they never went in business until 1936 or 1937?

Mr. McConnell: Against the independent theatres, and so alleged in the complaint.

The Court: You are not suing a group here, are you?

Mr. McConnell: No, but we come into a situation which we are meeting now, and having to meet, and we can only show that situation by going back to the situation as it existed. This witness can show what happened when these large theatres that we have been talking about here in this case, when they tried to get pictures against Balaban & Katz, what happened.

Now, Balaban & Katz are saying that they are entitled to pictures ahead of the Jackson Park merely because they are large theatres, and de luxe theatres, and so forth. Now, here is a case where—

Mr. O'Brien: Well, Mr. McConnell is testifying, it seems to me, a fully argument on this as it relates to my clients. I think perhaps the jury should be excluded. He made a number of statements which are very dubious, seeking to prove the situation of the Jackson Park on the south side by reference to the west side and north side.

543 Mr. McConnell: Well, the law is clear that in proving conspiracy I can go back as far as necessary to show what started it, and what motivates it, and what is back of it.

The Court: I guess that is the general principle of law that in conspiracy there seems to be no limitation as to what you can do, what you can show; but somewhere along here we have to make some sort of a line beyond which you are not going to go.

Mr. McConnell: Well, I am not going any further than to show the motive, and the motive is the same in this case as it was in that. I want to go into it far enough to show the motive of excluding these independent theatres.

Mr. Seeley: Just the fact he is only going into it that far does not mean that he won't force the defendants here to go into the whole picture, because it will be necessary. We will have to explain these charges he mentions here, and we will of course go into it if he insists upon opening it up. I think it is far afield from this case.

Mr. O'Brien: It is always within the discretion of the Judge, the Court, as to how far they will go in those things.

Mr. McConnell: Well, that motive was the same then
544 as it is today, and I just want to show the motive.

Mr. Adcock: Many, many years ago, long prior to the time these plaintiffs ever had anything to do with this, with the operation of theatres.

The Court: The objection is overruled. He may answer the question. Do you remember the question?

The Witness: No, I don't. Will you repeat the question, please?

(Question read.)

The Witness: A. Well, they were two very modern theatres, on a par with any of the finer theatres that were built at that particular time, with that seating capacities.

Mr. McConnell: Q. Now, you say that you were a booker for—

A. (Interrupting.) I was film buyer for the Marx Brothers.

Q. For the Marx Brothers Theatres?

A. That is right.

Q. Were they the owners of the Granada and the Marbro Theatres?

A. Yes, they were.

Q. Do you recall that in about August, 1926, you had a conversation with Mr. Neil Agnew with reference
545 to obtaining pictures for the Marbro Theatre?

Mr. Adcock: I object to that, your Honor.

The Court: Who is Neil Agnew?

Mr. McConnell: Neil Agnew is Vice-President, as I understand it, of one of the defendants in this case. He is, of Paramount.

The Court: It has not been brought out here so far. I don't know anything about it. Until it develops in the evidence who Neil Agnew is, I will sustain the objection.

Mr. McConnell: Q. Who is Mr. Neil Agnew, do you know?

A. At that particular time Neil Agnew was Sales Manager for Paramount Pictures.

Q. And do you know whether he is still connected with Paramount Pictures, one of the defendants in this case?

A. I don't know a thing about it. The only thing I know is from what I read. I think he is still with Paramount Pictures.

Q. All right. In September of 1926, or in August, 1926, did you have a conversation with Mr. Neil Agnew with reference to obtaining pictures for the Marbro Theatre?

Mr. Adcock: I object to that.

The Court: What is the objection?

546 Mr. Adcock: Going into an issue which is entirely collateral to this proceeding.

The Court: The objection is overruled.

Mr. Adcock: May my objection go to this line of questioning?

The Court: Yes.

Mr. Adcock: As leading.

Mr. McConnell: Read the question to the witness, please.

(Question read.)

The Court: The question was whether there was a conversation, wasn't that the question?

Mr. McConnell: Yes.

The Court: All right. What is the answer?

A. I believe I did have a conversation with him at that time, and I believe it is a matter of record here in the court as to what I testified to, or I made affidavits to.

Mr. McConnell: Q. Do you have a recollection of it, an independent recollection of it?

A. No, I don't remember offhanded.

Q. I show you a document and ask if your signature is on that document?

A. Yes; that is my signature.

Mr. McConnell: I will ask you to read pages 2 and
547 3 of that document and see if that refreshes your recollection.

Mr. Seeley: While he is reading it, your Honor, am I correct in my understanding that there is a standing reservation of an objection which each of the defendants may have, that it is not bound by the acts of other defendants unless and until a conspiracy is shown?

The Court: Yes, sir.

Mr. Seeley: I thought that was true, but I wanted to be sure.

The Witness: Would you read the question, please?

(Question read.)

A. Recollection of what, my conversation with Mr. Agnew at that time?

Mr. McConnell: Q. Does that refresh your recollection of that conversation?

A. Yes, it does.

Q. All right. Now, will you tell us what that conversation was?

Mr. Seeley: Will you ask who were present?

Mr. McConnell: Q. Who were present at the conversation?

A. Mr. Ross, who at that time was, I believe, the Dis-

trict Manager of Paramount Pictures. No, he was
548 Chicago Manager of the Chicago office, and Mr. Agnew at that time I think was the Division Manager. I might be wrong about that. It might have been reversed; but they were both with Paramount Pictures; and on behalf of Marx Brothers I approached them on numerous occasions to see whether or not I could buy their product for the Granada and Marbro Theatres.

Q. Well, what was said in that conversation?

A. Well, at that time they told me it was not possible to sell me any pictures in those Theatres.

Q. In the month of August of 1926 did you have a talk with Mr. Sam Shirley, the District Manager of Metro-Goldwyn-Mayer?

A. I would prefer to read that affidavit, too, if I can. I don't remember the dates.

Mr. Seeley: What was that date, Mr. McConnell?

Mr. McConnell: August, '26.

A. Yes, I did.

Mr. McConnell: Q. Before going into that conversation, in your conversation with Mr. Neil Agnew did he tell you why you could not get any pictures for the Marbro or Granada Theatres?

A. I don't remember what his reason was.

Q. All right. Now, you had a conversation with Mr.
549 Shirley?

A. That is right.

Q. What was said there?

A. At that time I asked him if I could not get some of the product of Metro to play in the Granada and Marbro Theatres, that product that was not played at the Balaban & Katz Theatres. He told me to come back in a few days, and he would let me know.

Q. Did you go back in a few days?

A. Yes, I did.

Q. What did he say?

A. That he had discussed that with Balaban & Katz, and he could not sell me any pictures.

Q. Did he give you any other reason as to why he could not?

A. Not that I recall.

Q. Do you recall a conversation that you had in August, 1926, with a Mr. Mark Lesserman, of First National Pictures, Inc.?

A. No, I don't recall the conversation.

Q. During the months of May and June and July, 1927, did you make demands on Paramount and Metro-Goldwyn-Mayer Companies for product for your Marbro Theatre?

A. I made demands on all the major companies for product.

Q. And did you get it?

550 Mr. O'Brien: I am going to object to that, if the Court please, as not responsive.

The Court: Objection sustained; and the answer stricken.

Mr. McConnell: Q. Now, on June 9th, 1927, did you have a conversation with Mr. Agnew of Paramount with reference to obtaining product for the Marbro and Granada Theatres?

A. May I see that affidavit I signed at that time?

551 Mr. Seeley: Did I ask or suggest that we have a standing objection to this entire line of relating to the Granada and Marbro Theatre?

The Court: You did not, but your associate director behind you did. It applies to everybody.

Mr. Seeley: Thank you.

The Witness: Yes, I did.

Mr. McConnell: Q. What was that conversation?

A. I again approached them for product for those theatres and they told me there might be a possibility they could sell me some pictures, and later, when I returned, they told me they had received word from their New York office that they were unable to sell me.

Q. Do you remember a conversation that you had with Mr. Felix Mendelson of Metro-Goldwyn-Mayer on or about June 9, 1927?

A. No, I don't.

Q. I show you your affidavit and ask you to read it and refresh your recollection, if you can.

(Witness examines document.)

A. Yes, I do.

Q. What was said there?

A. He told me that he was sorry at that particular time that he could not sell me product and that I ques-

552 tioned him then about the Sheridan Theatre, which was direct opposition to Balaban & Katz. He told me it made no difference, he still could not sell me.

Q. Did he say why he could not sell you?

A. He had received orders from the New York office and that there was some prior obligations to Balaban & Katz.

Q. Did he say they were unable to do any business or lease any pictures to you?

A. Yes, sir.

Q. Do you remember a conversation on June 9, 1927, with Mr. Wallace?

A. No, I don't.

Q. I will ask you to read this and refresh your recollection.

(Witness examines document.)

A. Yes, I do.

Q. What was said there?

Mr. Seeley: I object to that until this Mr. Wallace has been identified. I don't know who he is.

Mr. McConnell: Q. Who was Mr. Wallace?

The Witness: A. I believe at that time Mr. Wallace was the district manager of the United Artists Pictures.

Mr. Seeley: Then I object to the conversation be-
553 cause it is something done by somebody who is not a party to this action, and it cannot possibly be binding on any one here.

The Court: United Artists?

Mr. Seeley: Yes, they are not parties here.

The Court: Not defendants?

Mr. McConnell: They are not defendants, no.

The Court: That objection is pretty good, then.

Mr. McConnell: I think it is a good objection.

The Court: If we both agree on it we will hold it so.

Mr. O'Brien: Your Honor, I think we should make the same objection, in respect to First National, the conversation with Mr. Lesserman be stricken. I had not realized about First National not being a party here.

Mr. McConnell: That is part of Twentieth Century-Fox, is it not?

Mr. Seeley: No, sir.

Mr. McConnell: Wasn't that acquired by one of the defendants in this case, the First National?

Mr. Seeley: I don't know about that, but it was not acquired by any of the clients I represent.

The Court: Was it acquired by any of the clients anybody represents? Mr. Seeley acquits himself.

554 Mr. McConnell: It was acquired by Warner Bros.

Mr. O'Brien: I object to that statement. If you wish to prove that it was acquired by Warner Bros., which is not the fact, you can go ahead and do it, but First National Pictures, back at the time of this conversation in 1927 was had, was not owned by anybody but itself, and was responsible for its own acts, and I ask that—that conversation be stricken.

The Court: Well, if there is no connection—

Mr. O'Brien: There is not.

The Court: —between it and any of the defendants, that conversation—

Mr. McConnell: Well, I can connect that up to show the acquisition of First National.

The Court: All right. The motion will be filed.

Mr. O'Brien: Well, your Honor, there is no objection to stating that in 1929, two years after this event, stock of First National was acquired by Warners, but that does not mean that Warners in any way became liable for actions of the First National. Neither is the First National sued.

The Court: Does Warners own it now?

Mr. McConnell: Yes.

555 Mr. O'Brien: Surely, but, not only that, the evidence will show that Warner Brothers sold these fellows product. And I object to the remarks of counsel, as I have done before, as highly prejudicial.

The Court: Well, your remark—I take it you have no objection that Warners does now control the company.

Mr. O'Brien: Now, but not in 1927.

Mr. McConnell: It is the same thing in existence, and its stock is part of the assets.

The Court: Your remarks will be stricken and his objection will be overruled. Now let us have another question.

Mr. McConnell: Q. Do you remember having a conversation with Mr. Clyde Eckhardt about June 15, 1928?

The Witness: A. I don't remember the conversation. I had numerous conversations with him, but if I can see my affidavit it may refresh my memory.

Mr. Adcock: 1928?

Mr. McConnell: Yes.

(Witness examines document.)

The Witness: Yes, I did.

Mr. McConnell: Q. What was said in that conversation?

556 A. That particular time I had a talk with James Coston, and both Clyde Eckhardt—

Q. Who is Mr. James Coston?

A. Mr. Coston at that time was a film buyer of the Capitol and Avalon and the Warner theatres on the south side. Wait a minute.

Mr. O'Brien: What theatres?

The Witness: I think they were independent theatres. I will withdraw that.

Mr. O'Brien: I object to the statement and move to withdraw it.

The Court: Well, he said he made a mistake, so it goes out.

Mr. O'Brien: I object to any conversation back in 1926 or '27, three years before Warners acquired it.

Mr. McConnell: I asked for conversation with Clyde Eckhardt and he was leading up to that. He said he had a conversation, without going into that. Now, what was said?

The Witness: A. Went to see Clyde Eckhardt and Jim Granger, general sales manager of Fox Pictures at that time, and made a deal to buy some pictures and while we were waiting for the products they advised us that four of the best pictures were going to be sold to Balaban
557 & Katz and that we would have to take the remainder, and if we did not pay the prices they were asking for the product, which was exorbitant, they would sell all the products to Balaban & Katz.

Mr. Seeley: I move the witness' conclusion that the prices were exorbitant be stricken.

Mr. McConnell: Q. Well, was this part of the conversation?

The Witness: It was part of the conversation. I believe it is part of my affidavit.

Mr. McConnell: It should not be stricken then if it is part of the conversation.

The Court: Well, if that is part of the conversation it may stand. If it is merely his statement, of course that is his conclusion and it will be stricken. Was that your conversation with these men?

The Witness: It was my conversation.

Mr. Adcock: The way that is stated it could not have been part of the conversation. He said he talked about certain pictures which were exorbitant. Nobody said they

were exorbitant at that time. He does not testify that they did.

Mr. O'Brien: Well, read that part of the affidavit.

558 The Court: Well, we can get at it much more quickly. What was that conversation? Repeat it, Mr. Witness.

Mr. McConnell: Yes, what was your conversation?

The Court: Between you and Mr. Eckhardt?

The Witness: Mr. Eckhardt and Mr. Granger.

The Court: What was that?

The Witness: We had originally negotiated where we were to get twenty pictures. When we went back to consummate the deal he advised us that four of the best pictures were sold to Balaban & Katz, and we could have the balance, the remainder of the original amount we had agreed upon, and he asked a price at that time when they quoted the price to us we thought the price was exorbitant, and he told us that if he did not give it to us at that price he would sell all the product to the competitor's theatres.

Mr. Adcock: If the Court please, I move that be stricken.

The Court: It goes back to this point: You say you thought the price was exorbitant. The question is did you tell him the price was exorbitant or was that something that existed in your own mind and therefore it would

559 be your conclusion?

The Witness: No, we told him the price was exorbitant, and they told me that if we did not want to pay it they would sell it to the competitor.

The Court: The motion is disallowed.

Mr. McConnell: Q. Now, did Clyde Eckhardt tell you why he would not sell you the pictures?

The Witness: A. I don't recall, unless it is part of my affidavit.

Q. You don't recall anything that is not in your affidavit, is that it?

A. No, I don't recall.

Q. What was the purpose of this affidavit?

Mr. O'Brien: I object to the purpose of the affidavit. His own witness—

The Court: The objection is sustained. How is that material?

Mr. McConnell: Q. Well, will you state the circumstances under which you signed that affidavit?

Mr. O'Brien: Why, I still object to it.

The Court: The objection is sustained.

Mr. McConnell: Q. What happened to the Granada and the Marbro Theatres, do you know?

Mr. O'Brien: That is immaterial and is objected to.

560 The Court: What do you mean by what happened?

Mr. McConnell: Well, I don't want to tell the witness the answer by telling him the purpose of the question.

The Court: All right, I guess that is a good reason.

Mr. O'Brien: The same reason for excluding the affidavit would apply to that.

The Court: No, I don't think so. He may answer that question. The objection is overruled.

The Witness: What is the question,—what happened to the Granada and Marbro Theatres?

Mr. McConnell: Yes, after that.

The Witness: After what?

Mr. McConnell: After the time you are speaking of here in your conversations for buying product.

The Witness: The theatres were sold to Balaban & Katz.

Mr. McConnell: You may cross-examine.

The Court: Let us take our customary recess for about ten minutes.

Mr. Seeley: May I see the affidavit during the recess?

(Document handed to counsel.)

561 (A recess was taken, after which the following further proceedings were had herein:)

Mr. Seeley: Your Honor, I have got about half way through this affidavit. It pertains to a subject matter with which I am wholly unfamiliar. The arising of the issue in this case has taken me completely by surprise. I can in a couple of days talk to some of the people who know some of the facts. I should like, therefore, the privilege of reserving my cross-examination of this witness and asking him to return Monday.

Mr. McConnell: I have no objection. I don't want to take any advantage of counsel at all. If he wants that time, I have no objection to it.

The Court: All right. Where does that leave us, then?

Mr. Seeley: We still have those depositions.

Mr. McConnell: We have the depositions.

The Court: All right. I am going to ask you to come back Monday.

The Witness: Judge, would it be possible—I worked until five o'clock this morning—I work at night; could I come in in the afternoon, instead of the morning?

The Court: All right.

562 The Witness: It is awfully hard for me to come in in the morning.

The Court: What about two o'clock?

The Witness: That will be fine.

(Witness temporarily excused.)

Mr. Seeley: Your Honor, I found this affidavit is out of the Court's records and that counsel has no copy. May I have leave to take it long enough to get copies made?

The Court: Yes. You bring it back.

Mr. Seeley: I shall be responsible.

The Court: All right, we will take your word for it.

563 The Court: The jury will understand this is a deposition; they are going to put in the testimony of a witness taken at some other time and place, and Mr. McConnell is going to ask questions as he did at the examination and his associate will give the answer the witness gave at the time the deposition was taken. Is that your procedure?

Mr. McConnell: Exactly right.

Mr. O'Brien: In what order will you read?

Mr. McConnell: I am reading first from the deposition of Mr. Allen Usher.

Mr. O'Brien: And then after that?

Mr. McConnell: After Mr. Usher, the deposition of Mr. Sam Gorelick, and after that the deposition of Mr. Jack Osserman.

Mr. Adcock: On what basis are you seeking to read that deposition?

Mr. McConnell: I think I should make a statement on that.

If the Court please, these are depositions which were taken of officials, employees, or agents of the defendants in this case, taken under the Rules of Civil Procedure, which give me the right to obtain admissions by oral
564 interrogation by deposition, and they are offered not being binding upon the plaintiffs in the case, but simply under that rule whereby, for what they are worth, they come in and we are not bound by them,—adverse testimony.

Mr. Adcock: You are proceeding to offer the testimony on the ground that you claim he is a managing agent, is that correct?

Mr. McConnell: Well, the materiality of the proof will appear as we go along.

Mr. Adcock: No, but otherwise you would have to show that he is not in the jurisdiction of this Court.

Mr. McConnell: Well, under the rule, if they are the agents, officials, employees of a defendant in the case, then they are admissible for any purpose at the trial, regardless of whether or not the witness is—

Mr. Adcock: That is not the rule. He must be the managing agent. I don't think that he is the managing agent. Rule 26.

Mr. McConnell: I don't think that is so.

The Court: Under what rule are we proceeding?

Mr. Adcock: Rule 26, your Honor.

565 The Court: That is the general rule on depositions. What particular part covers this practice?

Mr. Adcock: It is (a), (b), (c), or (d) there. It is (c), I think.

The Court: This is the man who is trying to read it. Let us see what he says.

Mr. Adcock: Do you find the place?

The Court: Yes.

Mr. Adcock: It provides the managing agent, does it not?

The Court: "Officer, director, or managing agent of a public or private corporation."

Mr. McConnell: He is managing officer.

Mr. Adcock: No, it does not appear he is an officer.

The Court: I am sure I don't know anything about it. I don't even know the name of the man you are talking about.

Mr. Adcock: It does not appear that he is an officer or managing agent as far as that is concerned.

Mr. McConnell: (Reading from deposition:)

566 "Q. Will you state your full name, please?

"A. Allen Usher."

Mr. Adcock: I object to reading the deposition until it does appear that Mr. Usher is not within the jurisdiction of the Court; that he is the managing agent of the corporation.

Mr. McConnell: Well, I cannot show except by his deposition. We get right to the question here on it.

The Court: Well, of course the other part of your objection has to do with another branch of the rule, doesn't

it, where he is more than a hundred miles away or something like that?

Mr. Adcock: If he is a managing agent, yes, sir.

The Court: No, you made a different objection, then you added something else on to it.

Mr. Adcock: If he is without the jurisdiction of the Court.

The Court: That does not come under 26, does it?

Mr. Adcock: Well, if he is within the jurisdiction of the Court and the deposition has been taken it cannot be read unless he is the managing agent of the corporation.

Mr. O'Brien: Or an officer.

Mr. Adcock: Or an officer. But if he is not a man-
567 aging agent or officer the deposition may be read if he is without the jurisdiction of the Court and cannot be produced.

The Court: A greater distance than 100 miles.

Mr. McConnell: Well, aside from that question, the proof is going to show here by his own deposition that he is a managing agent in the sense in which that word is used in that statute. It shows it right here by his own testimony.

Mr. O'Brien: Well, it does not interest me particularly, your Honor, except to get it settled. It may come up later. There are a number of Illinois decisions defining what is meant by a "managing agent," and it does not mean any agent; it means the man in general supervision of the affairs of the corporation; it means the general manager of the corporation.

Mr. McConnell: Well, this man is district manager for Paramount.

Mr. O'Brien: That does not matter.

The Court: That is one part of the objection. The other part of the objection is relative to where this wit-
ness is at the present time.

568 "The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: 1, that the witness is dead; or 2, that the witness is at a greater distance than 100 miles from the place of trial."

That is the point Mr. Adcock mentioned.

Mr. McConnell: But that point does not apply, by an express provision of the rules, to an adverse party witness.

The Court: Where is that provision in the rule?

Mr. McConnell: That is in the rule.

Mr. Adcock: No. The adverse party witness, in the case of a corporation, must be the managing agent, unless he is an officer or director of the corporation. These depositions were taken under the rule for adverse examination, and, under that, anybody's deposition may be taken, whoever he may be, but in the case of a managing agent of a party, then the deposition may be used without going further, or if he is an officer or director. Now our position is that Mr. Usher is not the managing agent in the sense the term "managing agent" is used in that rule.

569 The Court: Then I did not understand your objection. I understand your position now is this man is the managing officer irrespective of how far he lives from this court house.

Mr. Adcock: He may be right here.

The Court: Then he may proceed to show who he is.

Mr. McConnell: (Reading from deposition:)

"Q. Will you state your full name, please?

"A. Allen Usher.

"Q. And what is your business or occupation?

"A. I am District Manager for Paramount Pictures, Incorporated, in Chicago.

"Q. And where is your office here in Chicago?

"A. 1506 South Michigan Avenue.

"Q. And how long have you been District Manager of Paramount Pictures?

"A. Close to twelve years.

"Q. And prior to that time what was your position?

"A. Six years as District Manager; six years prior to that as branch manager, in the same office.

570 "Q. And prior to that time how were you employed?

"A. I have been with Paramount for a period of twenty years. Started with them in San Francisco, worked in Portland, Oregon, branch manager in Salt Lake City, and then branch manager in Milwaukee, prior to coming to Chicago.

"Q. When did you come to Chicago?

"A. About twelve years ago.

"Q. Which would be the year 1930, approximately?

"A. I think it was '31.

"Q. '31?

"A. Yes.

"Q. What is the nature of the business of Paramount Pictures Company?"

Mr. Adcock: Now that is all there is on the subject of the agency.

Mr. McConnell: No, it is not. It goes on to show the nature of their business and shows he was in charge of the distribution of pictures here in the City of Chicago.

The Court: Well, that is a different point, now.

571 Mr. Adcock: Well, all right, if you think it is further in the deposition that you may get to that question, go ahead.

Mr. McConnell: (Resuming reading from deposition:)

"A. Well, the nature of it, as far as the end I am in, is distribution.

"Q. Are you familiar with the nature of the business of the corporation for which you act as District Manager?

"A. Well, I am familiar with the department I am in, which is distribution.

"Q. Do you have any familiarity with the business as a whole, of the corporation?

"A. Familiarity?

"Q. Yes.

"A. Do I know what the other parts of the company are?

"Q. Yes.

"A. Yes. We produce motion pictures, and we have a Theatre Department that exhibits them.

"Q. And where are those pictures produced, in most instances?

"A. Most of them are produced in Hollywood,
572 California.

"Q. And such production consists of a film, does it not, which can be shown for exhibition purposes?

"A. That is right.

"Q. Such film is sent either by parcel post or by some other means of shipment, from California to the place of exhibition, is that correct?

"A. Not to the place of exhibition.

"Q. Well, where is it sent?

"A. It is sent to the Exchange, to distribution centers.

"Q. Well, will you trace for us a film which is being exhibited, to be exhibited in the City of Chicago, from the time of its production to the time of its exhibition?

"A. Well, we usually receive one featured print. That is shipped ahead of the other prints, usually expressed to our Exchange. The balance of the prints are usually shipped freight from our Hollywood studios direct to the Chicago Exchange.

"Q. And what happens to the film after it has
573 been exhibited here in Chicago?

"A. After it has been exhibited?

"Q. Yes; after it has completed all its runs in the Chicago Exchange District, what happens to the film after that?

"A. Why, they are junked, forwarded to a laboratory to be reclaimed.

"Q. Do you know who has title of these films which are produced by your company?

"A. Title to them?

"Q. Yes.

"A. The ownership of them?

"Q. The ownership of them?

"A. Paramount Pictures, Incorporated.

"Q. And the theatre that exhibits them obtains a license to exhibit those films for a particular time, is that right?

"A. That is right.

"Q. And pays to the Paramount Company a royalty or rental?

"A. A license fee, yes."

Mr. McConnell: I am skipping to the next page, the seventh line on page 73:

"Q. Who are the officers of Paramount Pictures,
574 Inc.?"

Mr. Seeley: I think he should read the whole thing, Judge. If he does not we will probably want to, and it would be much better for the jury to get his testimony in one piece than to break it up.

The Court: Well, what is he skipping?

Mr. McConnell: It just breaks into the thread of it. We have a right to edit this. These are admissions which they have made, just like any other admissions which a director or officer of a corporation might make. I don't have to read it all in. We are taking their deposition as adverse parties, drawing something out of their mouths in admissions. We don't have to put it all in, provided we are fair and put in and give the entire subject matter, and then they can put in anything they want.

Mr. Adcock: If the Court please, they are compelled to read all the witness states that is germane to any of the parts of the deposition they offer and I think the part they are leaving out is germane to the part that they have already offered.

The Court: Well, unless you read all that is in
575 there we will have to stop every so often, in the same manner in which we are stopping at the present time, to decide whether or not what you are leaving out is something they consider is germane to the subject of this deposition; so I think you will save time for everybody if you just read the whole deposition.

Mr. McConnell: The only thing is there is something in this—if they want to put it in, all right, but I don't want to admit it as part of my case. I am perfectly willing to read what they are doing.

The Court: Well, if you are, why don't you go ahead and do it and we will save time.

Mr. McConnell: (Resuming reading from deposition:)

"Q. A license fee?

"A. Yes.

"Q. Do you know where Paramount Pictures, Inc., is incorporated?

"A. I believe it is a New York State corporation.

"Q. Are you familiar with the stock holding of Paramount Pictures, Inc.,—

"A. No.

576 "Q. (Continuing) —in Balaban & Katz Corporation?

"A. No.

"Q. You have no knowledge of that?

"A. None at all.

"Q. Would you say it was a fact that 97 per cent of the stock of Balaban & Katz is owned by Paramount?

"A. I don't know.

"Q. Who are the officers of Paramount Pictures, Inc.?

"A. The Home Office is 1501 Broadway, New York City.

"Q. Who are the officers?

"A. The President of the corporation is Barney Balaban. The Chairman of the Board is Adolph Zukor. Beyond that I cannot state the officers.

"Q. Do you know who the officers of Balaban & Katz Corporation are?

"A. No.

"Q. You would not know who was the President of that corporation?

"A. No, I don't.

577 "Q. Who do you deal with, as a distributor, with Balaban & Katz, what officer?

"A. I dealt with a number of officers, pertaining to our different work. If it is publicity, I deal with their publicity director. If it is booking films, I deal with their booker, Mr. Joe Kaufman. Usually in the selling of film we deal with Walter Immerman. On matters pertaining to accounting, we deal some times with Elmer Upton.

"Q. You have been with this company now eleven years, and you don't know Mr. Barney Balaban is President of Balaban & Katz?

"A. No, I didn't know whether he was President, or whether it was Immerman, or whether it was John Balaban.

"Q. Do you know anything about a company known as Great States Company?

"A. Yes. Great States Circuit operates theatres in the State of Illinois.

"Q. And who owns that company, do you know?

"A. No. I know the general manager is J. Ru-

578 bens.

"Q. Is there a President of the company?

"A. I should imagine, but I don't know who the President is.

"Q. You don't know the officers of the company?

"A. No."

579 Mr. McConnell: There are three pages here about grading pictures. It is a subject matter I am not interested in.

The Court: Do you want that in?

Mr. Seeley: Yes.

Mr. Adcock: Yes.

Mr. McConnell: All right.

"Q. In the sale of a picture produced by Paramount Pictures, do you grade your pictures as to whether they are A, B, C, or D?

"A. We have different brackets, yes.

"Q. How do you designate your different brackets?

"A. Based on their valuation, box office valuation.

"Q. Do you give them any designation, by letter or number, any other designating mark?

"A. We have for our own office records, yes.
"Q. And how do you do it for your own office records?
"A. We establish a sales policy when we are ready to distribute the pictures.
580 "Q. And how do you designate them? In what way, what mechanical way do you designate those pictures?
"A. Based on their value.
"Q. Well, how, as to A, or as to 1 of as to 2; in what manner?
"A. Well, they may be A, B, C, or D.
"Q. Well, are they A, B, C, or D?
"A. Yes. Sometimes we have double A's.
"Q. And you have a double A designation, an A designation, B designation, C designation?
"A. Yes.
"Q. And what percentage of your pictures would you say you would designate as grade AA?
"A. Oh, roughly six to ten a year.
"Q. And how about Grade A?
"A. It depends on the number of pictures we make a year. We may make thirty, and we may make fifty, so there is a difference. There is a different policy each year.
"Q. Well, I am asking you generally as to what proportion of the pictures would you produce?
581 "A. Do you want it for the year when we had thirty pictures, or do you want it for the year when we had fifty pictures, or one when we had eighty?
"Q. Well, would the percentage vary more or less between the years?
"A. Certainly it would, as your numbers did.
"Q. Well, in the year in which you produced fifty pictures, about what percentage would you say would be grade A pictures?
"A. Eight to twelve.
"Q. Now, prior to the time of the consent decree—you are familiar with the consent decree?"
Mr. McConnell: Do you want your colloquy?
Mr. Seeley: No.
Mr. McConnell (resumes reading):
"Mr. McConnell: Q. It was the practice in the distribution of motion pictures to sell pictures in blocks, was it not?
"A. We sold a year's production at one time.
"Q. And those pictures consisted of what you des-
582 ignate in the trade as a block of pictures, is that right?

"A. No, I would not say that. It was a year's product. It was a group of pictures.

"Q. A group?

"A. Yes, sir.

"Q. And when was the buying season, prior to the year 1940?

"A. When was the buying season prior to the year 1940?

"Q. Yes.

"A. Well, we sold pictures for the full time.

"Q. What period of the year?

"A. The start of the season, when would the first picture be released?

"Q. No. When would you sell your pictures for the coming year?

"A. Usually in the fall of the year.

"Q. Isn't it a fact that there is an exhibition season and was an exhibition season which started about the first of September, and ran from September to September?

"A. Yes, that is about right. We did start some years in August, some years in September.

583 "Q. Generally, it started and ran from September to September.

"A. No. I think our year started in August, for a great number of years.

"Q. Well, is there any definite way you can determine that, when your year started?

"A. It depends when you have new pictures available. Our year this year won't start until about October 1st.

"Q. I am not asking you about this year. I am asking you about years prior to 1940.

"A. Most of those years were August 1st.

"Q. And ran to what time?

"A. The end of July.

"Q. The end of July?

"A. Yes, sir.

"Q. And you say you had to do with the distribution of pictures for Paramount, Inc.?

"A. That is right.

"Q. And what time of the year would you enter into negotiations with the exhibitors for the sale of your product for that year that you have just designated?

"A. Oh, some years we may have started in May,

584 some in June, some in July.

"Q. Is there what is known in the trade as a buying season, was there at that time?

"A. I don't remember of having anybody refer to it as a buying season.

"Q. Well, there was a period of time then in which you did not enter into negotiations?

"A. If you want to go back aways; we used to sell twice a year; we would sell for a six months period.

"Q. How far back do you go?

"A. That is back a number of years.

"Q. Well, how far back?

"A. Back to the silent days.

"Q. Well, I am not familiar enough with the silent days. What date would that be, about?

"A. Well, I remember in the year 1922, or '23, when we sold 'The Covered Wagon', we sold the 'Famous Forty', which was a six months group of pictures, and in the same year we had the second Forty, which was the latter half season's product.

"Q. Well, from the year 1930 say down to 1940, 585 would you say there was any such system of six months' distribution?

"A. No.

"Q. So that you sold your pictures in a block for the year.

"Now, were those pictures, at the time you sold them, actually produced?

"A. A few of them.

"Q. When you sold them to the exhibitor, you made no exhibition of the pictures; he didn't view the showing of the pictures, did he?

"A. He may have had an opportunity to have seen some of the earlier releases.

"Q. But a large proportion of them were not actually produced at the time they were sold, isn't that the fact?

"A. Well, it depended upon whether you were dealing with a first run customer or a subsequent run customer. The subsequent run customer would usually have an opportunity to see a number of the pictures before he bought them, because they would have been played first run.

"Q. Well, the subsequent run and the first run 586 bought their pictures at the same time, didn't they?

"A. You would not sell them at the same time. You would make your first run deals first.

"Q. You would make your first run deals first?
"A. Yes.
"Q. Now, what would you call your first run deals?
"A. City of Chicago, here.
"Q. In the Loop, you mean?
"A. Yes.
"Q. The Loop?
"A. And your down-State first run situations.
"Q. Well, let us take it here in Chicago. You make your deals with Loop Theatres, first, is that a fact?
"A. That is right.
"Q. Then you make your deals with the A houses?
"A. Well, we would make our first run deal first, then we would make the subsequent run deal for the subsequent run theatres.

587 "Q. Now, would you make your A theatre deal at the same time you made your Loop theatre deal?
"A. No.
"Q. Isn't it a fact that when you sold pictures to Balaban & Katz, for example, you sold them—
"The Witness: I would like you to bear in mind in your questions that dealings each year differ. I don't know whether you are referring now to 1930 to 1940, or what year.
"Mr. McConnell: Q. You want me to designate the period of time about which I am inquiring, is that correct?
"A. Yes, sir.
"Q. Well, I would say from the year 1930 to the year 1940.
"A. My first run deal was a separate transaction.
"Q. And would that be true with a Company such as Balaban & Katz?
"A. That is right.
"Q. After your first run deal, you mean first, after your first Loop run?

588 "A. That is right.
"Q. After the Loop run was negotiated how long after that would you negotiate with Balaban & Katz for the runs for their A, B, and C theatres?
"A. It might be immediately after, or generally within a period of thirty days.
"Q. And your A, B, and C runs were then negotiated prior to the time that the subsequent runs were negotiated, is that the fact?

"A. They are all subsequent runs.

"Mr. McConnell: Answer that yes or no.

"A. What?

"Q. You can answer that yes or no.

"A. I don't know what you mean by, 'A, B, and C runs'. They are all subsequent runs.

"Q. You don't know what an A run is?

"A. There is an A period of release in the city; that is a twenty-one day period of release.

"Q. All right. I am talking about the theatre that exhibits pictures in that week of release?

"A. We would make our deal for our subsequent runs, regardless of their run,—regardless of their playing
589 position, the deal would be consummated at one time.

"Q. And would that be true of the Balaban & Katz houses?

"A. Yes.

"Q. So that you would make a deal with them for all their theatres at the same time?

"A. All of their subsequent run theatres, yes.

"Q. Except Loop theatres?

"A. That is right.

"Q. Now, when would you make that deal?

"A. I previously told you either immediately afterward or within a period of thirty days.

"Q. Would you make that deal prior to the time that you made the deals with the general release theatres, weeks of general release?

"A. We would make that deal prior to the time we negotiated for other subsequent runs in the city, yes.

"Q. Now, how would you know whether a house was an A house, or a B house, or a C house, when you were dealing with them in negotiations for the sale of your product?

"A. You mean Balaban & Katz or the others?

590 "Q. Any others in those weeks; not necessarily Balaban & Katz Corporation?

"A. Well, we would know their availability, their playing position, current playing position.

"Q. You would know it, but how would you know it?

"A. Because we were dealing with them regularly."

Mr. McConnell: Now, there is a lot of colloquy on page 84.

Mr. Seeley: You withdrew the question later, so you can skip that.

Mr. McConnell: The colloquy goes from page 85 to 86.

Mr. Seeley: There is a question which you asked near the top of page 85. I made an objection, which I will waive now. The answer is over on page 86, fairly well down the page:

"Q. How would you know that a certain house was entitled to buy pictures in a certain week of release?"

Mr. McConnell: What page is that?

Mr. Seeley: Page 85, five or six lines down.

591 Mr. McConnell: (Resumes reading:)

"Q. How would you know that a certain house was entitled to buy pictures in a certain week of release?

"A. Well, it is up to us. If we thought they were a customer worthy of our selling them in that week of release, we would negotiate with them."

Mr. McConnell: The colloquy goes down to page 86. (Resumed reading:)

"Q. Well, did they request a certain—did the exhibit request a certain week of release?

"A. Usually he asked for a certain playing position, tried to negotiate and tried to buy for a certain playing position.

"Q. Did you have any information at the time such request was made, as to what playing position he had been granted by other companies?

"A. No.

"Q. Had no way of knowing that?

"A. No.

"Q. And you did not know it?

"A. That is right.

592 "Q. So that it was just a mere matter of coincidence if you happened to sell a particular house in A week and all the other distributors sold in the same week?

"A. That is right.

"Q. Suppose a house should ask for a change in its playing position—do you understand what I mean by that?

"A. Yes.

"Q. To be specific, suppose it asks for a change from C week to B week, would you in any way consult or check with the other distributors?

"A. No.

"Q. As to whether that should be done?

"A. No.

"Q. Would you consult or check with any other exhibitor, as to whether or not that could be done?

"A. It depended on the condition.

"Q. But in certain instances you would?

"A. If you had direct competition, you might. If we had an instance where houses were in direct competition, where one would want to move up and one would want to move back, you might be able to switch runs, depend-
593 ing upon the theatre's ability to pay the maximum film rental. If we could, in any given situation, help ourselves in film revenue, in film rentals, we would endeavor to work it out.

"Q. So that when a theatre's position was changed from C to B, and that was agreed to by all the distributors, that was just a mere coincidence?

"A. Exactly.

"Q. Have you ever known of any instance where your Company released pictures in a week of release different from Loew's?

"A. I don't know what you mean by the question.

"Q. Do you know of any instance when you have sold pictures to an exhibiting theatre in the city of Chicago in a different week of release that that of other distributors?

"A. We set our own week of release; each distributor sets his own week of release.

"Q. I asked you did you know of any instance where your week of release was different than the week of release of other distributors?

594 "A. Oh, you mean our pictures, would they fall in the same week with other pictures, other distributors' pictures?

"Q. Yes. Yes.

"A. Certainly. There are eight to ten pictures in every week."

Mr. McConnell: Now, there is a colloquy. You don't want that in, do you?

Mr. Adcock: Where are you reading?

Mr. McConnell: Page 89.

Mr. Seeley: We just straightened out the misunderstanding and went on.

Mr. McConnell: (Resumed Reading:)

"Q. You understand what A week or pre-release is, do you not?

"A. Yes.

"Q. All right. Do you know of any instance where you sell pictures in A pre-release week to a given theatre where that theatre is granted a different week of release by another distributor?

"A. No.

"Q. So that you do know what weeks of release the other distributors grant to the exhibitor in the City
595 of Chicago?

"A. Well, the industry knows."

Mr. McConnell: There is testimony here about weeks of release.

Mr. Seeley: I agree we have been over that enough. I don't care to have it.

Mr. McConnell: We will skip that.

Mr. Seeley: Yes.

Mr. McConnell: Now, at the top of page 91: (resumed reading:)

"Mr. McConnell: Q. Now, calling your attention to the purchasing of pictures for the theatres by Balaban & Katz, in that negotiation, is that negotiation for its position as you described it carried on by correspondence?

"A. No.

"Q. Has there ever been any written demand on you by Balaban & Katz Corporation?

"A. No.

"Q. For playing position?

"A. Not that I can remember of.

"Q. Well, would you be the person to whom that matter would be taken up, on behalf of your corporation?
596 "A. Well, negotiations of that kind are usually done over a desk.

"Q. Well, do you know of any instance where they were not done over a desk?

"A. I don't remember any.

"Q. Have you made any search, have you looked through your files recently to see whether you have any correspondence with Balaban & Katz—

"A. No.

"Q. (Continuing:)—with reference to its playing position?

"A. No.

"Q. Will you make such a search and see if you have

any such correspondence with reference to clearance or with reference to playing position of Balaban & Katz?

"A. I will make the search, but I don't believe there is anything. There has been no correspondence of that nature.

"Q. Did you work on the various deals on behalf of your Company with Balaban & Katz for the different pictures?

"A. I usually sit in on the negotiations, yes.

597 "Q. Who else sits in?

"A. Why, sometimes our General Sales Manager, Mr. Neil Agnew, sometimes our Assistant General Sales Manager, Mr. Charles Ragens.

"Q. And who sits in for Balaban & Katz?

"A. John Balaban and Walter Immerman.

"Q. And when do those negotiations usually take place?

"A. In the fall of the year.

"Q. Now, there were a number of changes in playing positions which took place in the various Balaban & Katz theatres in about the year 1936. Did you sit in on those negotiations?

"A. I believe so.

"Q. And were all those changes negotiated at the same time or at different times?

"A. Different times.

"Q. But the changes in playing position all take place in the same year, do they not?

"A. I don't know what you mean. They change houses, some houses each year.

"Q. Well, would the change apply to a block of pictures which had already been purchased?

"A. What change?

598 "Q. Change in playing positions?

"A. I don't know what you mean. You have a list there showing the changes down through a period of years."

Mr. McConnell: Now, there is a colloquy.

Mr. Seeley: Where do you suggest we skip to?

Mr. Adcock: There is a question down below there: "Calling your attention to the changes in the playing position, * * *."

Mr. McConnell: (Resumes reading.)

"Q. Well, calling your attention to the changes in the

playing position of the Granada Theatre in the year 1936, do you see that on the chart?

"A. You mean they were in A week for two years then in B for three, and so forth?

"Q. Well, they were in B week in 1935, where they not, according to the chart?

"A. That is right.

"Q. And then they were in A week?

"A. That is right. Before and after.

"Q. All right. They were in it before and after, but they were in B before they were in A?

"A. No. They were always A prior to the B.

599 "Q. Well, they were B in 1935, were they not?

"A. That is right; during the period of depression.

"Mr. McConnell: I ask that the explanation, 'during the period of depression' go out."

Mr. Adcock: He has asked for the time they were in a certain playing position different from A. He says "that is right, during the period of depression."

Mr. McConnell: The question was: "They were in B week in 1935, were they not, according to the chart?" The witness answered: "That is right; during the period of depression." I asked that "during the period of depression" go out.

The Court: That may go out.

Mr. McConnell: (Resumes reading.)

"Mr. McConnell: Q. In 1936 they were in A?

"A. That is right.

"Q. Did you negotiate that change?

"A. I imagine so.

"Q. Do you remember anything about it?

"A. No, not specifically.

"Q. Do you know anything generally about it?

600 "A. I negotiate for 1400 theatres, and to try and be specific about one individual deal, it is impossible.

"Q. Well, your answer is you have no recollection then of the negotiation at that particular date?

"A. That is right."

Mr. McConnell: I want to skip all these questions on page 95, 96, and 97.

Mr. Adcock: 95?

Mr. Seeley: Just give us a minute to catch up.

The Court: Yes, sir.

Mr. Seeley: That is supposed to be lawyers' talk.

Mr. McConnell: Argument back and forth between the lawyers.

The Court: That is not important.

Mr. Seeley: It is not even very enlightening in this particular instance.

Mr. McConnell: I want to skip to 98.

Mr. Seeley: No, I would rather you begin the middle of 97.

Mr. McConnell: (Resumes reading.)

"Q. You stated that the Granada Theatre had
601 been in A week and then was in B week, and then in A week?

"A. Yes.

"Q. Now, I want to know whether that has some significance to your mind, the fact that it previously had been in A week, as to whether or not it should receive a playing position in A week?

"A. It is a matter of bargaining, a matter of negotiation.

"Q. Well, would that be one of the factors which would enter into the negotiations?

"A. If the theatre had the ability to buy our product and earn its way in A period of release, we would take that into consideration, yes.

"Q. In other words, the fact that it played in A week would in your mind be a consideration which you would take account of in determining whether or not to sell it pictures in A week; right?

"A. I think that is right.

"Q. Now, you testified, did you not, that when you made
your deal with Balaban & Katz you sold them prod-
602 uct for their chain of theatres?

"A. I testified that we negotiated with Balaban & Katz for their all of their subsequent runs at one time, yes."

Mr. McConnell: I want to skip over to the bottom of page 105.

Mr. Seeley: I will read it as fast as I can.

The Court: All right. Wait until they catch up.

Mr. Seeley: I don't think we should skip this.

The Court: All right. Go through it all.

Mr. McConnell: If the Court please, I don't think I have to clutter up the record with little bits of information. I have a right to present a sequence and edit the depos-

tion,—drawing words out of the mouth of the witness. If they want to read it in in their case, all right, but I don't think they can compel me to read all the deposition.

Mr. Seeley: This happens to be in a separate line of questions, but as I understand, the same line of questioning we have been reading.

The Court: Where is there anything in the rule that says you can read part and skip part?

603 Mr. McConnell: We have a case on that.

Mr. Adcock: The rule, I think, is clear that they must read all the deposition that is germane to any part they do read.

The Court: We are right back where we were a while ago. We have to stop every once in a while.

Mr. Adcock: The part he wants to cut out seems to be right on the same line.

Mr. McConnell: We don't have to read it all in as part of our case. We have to read all that is germane to what has gone before, yes. I will go that far with counsel.

The Court: That is as far as he wants you to go. Whether or not it is germane,—I supose we will have to go through it to satisfy you gentlemen.

Mr. Korfist: You stopped in the middle of page 98.

Mr. McConnell: I want to go to another subject, short subjects. I don't want to introduce the proof on that. Oh, probably the quickest way to do it is to read it.

The Court: You finally reached that conclusion?

Mr. McConnell: I am not conceding I have no right to refuse to read part of it.

604 The Court: But you do concede it is an impossible situation presented, if you don't.

Mr. McConnell: (Resumes reading.)

"Q. Turning now to the Jackson Park Theatre, are you familiar with the Jackson Park Theatre?

"A. Yes.

"Q. Owned by the plaintiffs in this case?

"A. Yes.

"Mr. McConnell: I will skip the Jackson Park for the moment, and go back to another subject.

"Q. You testified that the films prior to 1940 were sold in blocks or groups as you put it. Now, what would that group be composed of?

"A. A group of feature films.

"Q. Well, would it include anything else except feature films?

"A. Yes. We would sell short subjects, and news reels.

"Q. Trailers?

"A. No trailers.

"Q. No trailers?

"A. No.

605 "Q. And in that group of feature film, approximately how many pictures would be in a group?

"A. Oh, the average was in the neighborhood of 50.

"Q. And in that group of fifty there would be some A pictures, and some B pictures, and some C pictures, would there not?

"A. Yes; pictures that had different classifications.

"Q. And the exhibitor, to buy the A pictures, would have to buy the B and C pictures in that group, would he not?

"A. Usually they bought them all.

"Q. Well, they couldn't buy them any other way, could they?

"A. Yes. We did not sell complete groups.

"Q. You would split the group, would you?

"A. Yes. We would sell certain numbers out of groups, and had the right to cancel certain pictures in each group. There was always cancellation privileges.

"Q. Were those cancellation privileges in the contracts themselves?

606 "A. Yes.

"Q. Did you have the same policy of selling with reference to Balaban & Katz as the smaller theatre playing in a week of general release?

"A. It depended on the amount of pictures that they would consume for the year.

"Q. Assuming they consumed the same amount of pictures?

"A. There would be no difference in our negotiations.

"Q. In other words, the same group would be sold to both?

"A. That is right.

"Q. And the buyer had to take that group to get the pictures in the group, or any one picture in the group, did he not?

"A. He did not have to take anything. It was a mat-

ter of negotiation. If he wanted to buy them, he would buy them. If he did not want them, he would not.

"Q. You sold them not by the individual picture but by the group of pictures, is that the fact?

"A. Yes.

"Q. So that to get a given picture that he wanted 607 in the group he had to buy the group?

"A. No.

"Q. Would you sell him any picture out of the group?

"A. Yes. We sold individual pictures.

"Q. So if the Jackson Park wanted to buy one of your pictures, it would not have to buy the group, is that your position?

"A. Yes. He would have bought an individual picture. He may have bought, "The Covered Wagon" separately, or "The Ten Commandments," separately.

"Q. In other words, there was never any instance in the period of 1930 to 1940, when, for example, the Jackson Park Theatre was not permitted to buy any picture that it wanted, in any group, without buying the group?

"A. You mean could it designate?"

Mr. McConnell: There is a colloquy that I am skipping. (Resumes reading.)

"Q. Suppose 'The Covered Wagon' was in the group which was offered in any given year to the Jackson Park, could the Jackson Park Theatre buy 'The Covered Wagon' without buying the group?

608 "A. I think he did buy 'The Covered Wagon' separately.

"Q. Well, is your answer yes or no to the question?

"A. We sold certain pictures separately, yes.

"Q. Now, when you say the pictures were sold in groups you mean, or you meant, didn't you, that they were offered in groups?

"A. Exactly.

"Q. And that was an offer of a group of pictures which the exhibitor could buy or not, as he wished?

"A. That is right.

"Q. But you did not change the combinations or pictures in that group to suit each individual purchaser?

"A. No."

Mr. Seeley: There is an objection. I have not read far enough to see what has happened to it.

Mr. Adcock: You put a question and there is an answer at the bottom of the page.

Mr. McConnell: (Resumes reading:)

"Q. Now, getting back to a system of release in the City of Chicago, do you know of any other system of
609 release that has existed here in Chicago aside from the one which you have described, these successive weeks of release?"

Mr. Adcock: I guess you reframed your question again.

Mr. McConnell: (Resumes reading:)

"The question is: Do you know of any other way of releasing pictures in the City of Chicago aside from that which you have described here in your testimony?

"A. No.

"Q. Has that always been the way pictures have been released in Chicago?

"A. The periods of release that exist today have been the same during my time here.

"Q. And you are not familiar with what happened—

"A. No.

"Q. (Continuing:) Prior to the time you were here?

"A. No.

"Q. Did you ever have anything to do with determining the weeks of release?

"A. No.

610 "Q. Did you ever attend any conferences or—

"A. No.

"Q. (Continuing:) —talks with reference to it?

"A. No."

Mr. McConnell: I am not going into the west side and the north side releases.

Mr. Seeley: I don't think that is necessary. How far does that go?

Mr. McConnell: To double feature over on page 104. I want to skip to the bottom of page 105.

Mr. Seeley: No, I think you should begin on page 104, with "Did you have any negotiations with Balaban & Katz in 1936" and so on.

Mr. McConnell: All right. (Resumes reading:)

"Q. Did you have any negotiations with Balaban & Katz in 1936 with reference to supplying film for the double features in their theatres?

"A. Double features never entered into our discussions.

"Q. Well, it took more product to play double features than it did single features, didn't it?

"A. It did not alter the number of pictures we
611 sold.

"Q. You mean that they could play double features with the same number of pictures that they played single features?

"A. They were a one hundred per cent Paramount customer during double feature years, and single feature years.

"Q. You mean that they bought all of your product, all that you had to sell?

"A. Every year.

"Q. Every year?

"A. That is right.

"Q. Did that include the B and C and D pictures as well?

"A. That included all pictures.

"Q. They did not buy all your product for all their theatres, did they?

"A. If they all could consume it.

"Q. If they all could consume it, but they all could not consume it, could they?

"A. No. Certain theatres only used 100 pictures a year; others used two hundred; and some two hundred and fifty.

"Q. So each theatre did not buy all your prod-
612 uct?

"A. The maximum—the greater number did buy them all.

"Q. How about their A houses, did they buy all your product?

"A. No.

"Q. Their B houses, did they buy all your product?

"A. No.

"Q. And their C houses?

"A. The C houses bought it all.

"Q. Bought it all?

"A. Yes.

"Q. Now, in your Loop runs for Loop theatres, you stipulate an admission price, do you not, in your contract for film?

"A. Yes.

"Q. With the exhibitor?

"A. Yes.

"Q. And what is that price?

"A. At the present time?

"Q. Yes.

"A. I think it is 65 and 75 cents, nights, for adults' admission.

613 "Q. And pictures in the Loop are sold on a percentage basis, are they not?

"A. Yes. Incidentally, we have one running now that is $1.10 nights.

"Q. Are all pictures that are sold in the Loop sold, now that you sell in the Loop, I mean are they all sold on a percentage basis?

"A. Every picture is sold on a percentage.

"Q. So that the interest of you as a distributor of film and the exhibitor is the same, in trying to obtain the largest revenue possible from that Loop run?

"A. That is right."

Mr. Seeley: There is another objection.

Mr. McConnell: (Resumes reading:)

"Q. Now, the period of clearance, the three weeks waiting time after the conclusion of the Loop run, the 21-day period which you referred to, that is designed to protect the Loop theatre from competition with the outlying theatres, isn't that the fact?"

Mr. Seeley: Just a minute. In view of the answer, the objection is not important. Skip it.

Mr. McConnell: (Resumes reading:)

614 "A. We grant 21 days clearance on the first subsequent runs when we negotiate first run contracts for the Loop.

"Q. And that is for the protection of the Loop theatre against the competition of the outlying theatres, is it not?

"A. Because of the high admission, yes.

"Q. But you have the interest in obtaining high admission because you are sharing on the intake of the picture?

"A. That is right."

Mr. McConnell: Do you want to go into all this fuss and feathers we have here?

Mr. Seeley: We objected to that. Start on page 108.

Mr. McConnell: (Resumes reading.)

"Mr. McConnell: Q. Well, there is more box office appeal to the picture that is shown for the first time, is there not?

"A. Yes.

"Q. And for that reason you are able to obtain a higher admission price at a film's first showing than you are at a subsequent showing?

"A. That is right.

615 "Q. At the time the Loop theatre is exhibiting it no other theatre is permitted to exhibit it in the Chicago district?

"A. That is right.

"Q. Nor is it permitted to exhibit it for a period of three weeks after the Loop?

"A. Within the City of Chicago, that is right.

"Q. Within the City of Chicago?

"A. Yes.

"Q. So that any patron who wants to see a particular picture which is running in the Loop must wait three weeks after the Loop showing before he can see that picture at a lower admission price?

"A. That is right.

"Q. And that arrangement is designed, is it not, to make more money for the theatre and for the distributor in the Loop?

"A. That is right."

Mr. McConnell: I am leaving out my talk with you, Mr. Adcock.

Mr. Adcock: All right.

Mr. McConnell: (Resumes reading:)

"Mr. McConnell: Q. And that same arrangement which is carried out in A and B houses is designed for

616 the same purpose, is it not?

"A. Yes. We grant a first neighborhood showing to a theatre which has a large seating capacity, good refinements, good management, showmanship, ability to establish our pictures in that first neighborhood showing; a theatre with the ability to create a desire amongst the public to see the pictures.

"Q. You mean by that, that showing it in the theatre creates a desire to see it twice?

"A. The desire is created amongst the public in the neighborhood to see the picture, through advertising mediums.

"Q. Have you ever heard of the expression in the trade 'milking' pictures?

"A. No.

"Q. Well, after a picture has been shown in the Loop,

and in the A and the B and the C houses it has considerably less box office appeal, does it not?

"A. An outstanding picture that has had a long run, usually still is a long run picture when it gets down to the late subsequent runs; it is usually still an outstanding motion picture.

617 "Q. You would not consider it had the same box office appeal playing in the first week of general release that it had playing in B week or A week, would you?

"A. It is still a long run picture, does business down through the runs; it is still a top picture.

"Q. Still has the same box office appeal, you think, where it has been shown two or three times in the same neighborhood?

"A. That is right.

"Q. You think it has the same box office appeal?

"A. That is right.

"Q. Then there is no real advantage, is there, in the prior run to the A and B houses?

"A. You establish pictures that way.

The Court: How much more is there?

Mr. McConnell: This is a good place to stop.

The Court: You think it is a good place to stop? We will adjourn the jury until 10:30 Monday morning.

(Whereupon the trial in the above entitled case was continued to Monday, February 21, 1944, at the hour of 10:30 o'clock a. m.)

618 Florence B. Bigelow, et al.,
vs.
RKO Radio Pictures, Inc., et al.

Before Igoe, J., and J.

Monday, February 21, 1944,
10:30 o'clock A. M.

The Court met pursuant to adjournment.

Present:

Mr. McConnell,
Mr. Korfist;
Mr. Adcock,
Mr. Seeley,
Mr. O'Brien.

(And thereupon the following proceedings were had out of the presence and hearing of the jury:)

Mr. Adcock: If the Court please, in this case, in regard to that portion of the evidence of Mr. Salkin, which was given from an affidavit that he made on July 9th, 1928, relating to conversations that he had in 1926 and 1927 with certain representatives of Paramount, Fox and Metro-Goldwyn-Mayer, I wish to move to strike that portion
619 of the testimony, and I would like to be heard briefly on the matter. That affidavit was made evidently in connection with a controversy—I wonder if I could ask that that curtain be lowered a little bit over there? I can do it. It seems to get my eyes, the reflection. That is better. Thank you very much.

In the Marx Brothers case, it is a controversy that apparently arose back in 1926. It was the subject of a lawsuit started in 1928, in June. I knew nothing about that lawsuit, nothing about the controversy. I had heard of it. There were no allegations in the complaint here setting up any claim on account of that controversy, or what happened in that matter, and I think that is true of other counsel.

I find that it involved the Marx Brothers, two Marx Brothers theatres which had just been constructed, one the Granada in 1926, and the other the Marbro, on the west side, in 1927. The construction had commenced probably

in 1925, as to both theatres. They were large theatres, the Granada a 4,000 seat house, costing about three million dollars, and the Marbro, a 4,500 seat house, that cost about four million dollars. One is located on the west side
620 near Crawford avenue, on Madison, and the other is located near Devon avenue on the north side.

The issues in that case are not opposite to the issues in this case, the controversy there; that involved the question of alleged conspiracy, and it was an anti-trust suit. It was brought by the Marbro—by the Marx Brothers, plaintiffs, who operated those two theaters. That related solely only to whether certain things had been done by the defendants, as claimed in the complaint which deprived the Marx Brothers from getting suitable pictures for their new theatres. The old—the theatres that they were in competition with had been in operation for some time, or construction was commenced at the time, before the construction of these two theatres that I have mentioned.

There was no claim in that case, as I understand it, and as far as I have been able to read the record, that the release system or whatever the method of releasing pictures under any system of runs and minimum admission prices, and so forth, was arbitrary or unlawful or anything of the kind, as there is here, and that is the gist of the complaint in this case.

And for that reason, one reason, I do not think that the Court should take up other collateral controver-
621 sies.

I have been able to borrow a copy of the record. It is eight or nine inches thick, mostly printed. The record of that case here, in the clerk's office, covers a bushel basket of stuff. There were 24 defendants in that case. The distributors of motion pictures, the exhibitors of motion pictures, and vaudeville bookers, even William Morris Company, was a defendant in that case.

The plaintiffs were represented by Tenney, Harding, Sherman & Rogers, and by Joseph Rosenberg. The defendants were represented by ten different counsel, firms of attorneys, among whom was Judge Dunne's firm.

The case was dismissed by stipulation of the parties about a year after it was brought.

In the affidavit made by Salkin, and from which he testified, he testified, your Honor remembers, that he knew nothing about the conversations except as they were stated

in his affidavit, was one of twelve affidavits which was filed on behalf of the complainants in that case on their motion for a preliminary, or a temporary injunction.

There were fifty, about fifty affidavits that were
622 filed in opposition to that motion, for temporary injunction. There were also answers to interrogatories put by plaintiffs, answers to interrogatories by the defendants, which covered a large amount.

I don't understand that the motion for temporary injunction was ever argued.

I appreciate, your Honor, that the authorities are to the effect that such matters if apposite, and are on the head, relating to showing volition, may be gone into, but it is always in the discretion of the Court.

Now, in the affidavits that were filed in opposition are affidavits of some, or most of the persons, that Mr. Salkin, upon his affidavit, stated he talked to or talked with, in 1926 and 1927. They were affidavits by those different persons with whom he talked, representing the distributor defendants, filed in opposition to the motion for temporary injunction, and in opposition to the affidavits that had been filed on behalf of the plaintiffs in that suit on their motion for temporary injunction. So the answers, their versions of the conversations about which Mr. Salkin testified from the affidavit I have mentioned, the other day, is set forth in that record in the case;
623 but to take up, to go into any part of this, it may be necessary to go into the entire controversy, what it was about, show that to meet the inferences that may be drawn from the testimony that has been offered by Mr. Salkin. In the next place, Mr. Agnew was one of the persons represented here with whom Mr. Salkin testified that he had a conversation in 1926 and 1927.

I can not produce Mr. Agnew as he is serving on the jury in New York. I talked to him on Saturday.

And the circumstances of that situation are these: On the 9th of February, a few days before this case was called, I had a telephone call from New York, stating that Mr. Agnew was called on the jury, a criminal jury, in the Court of Sessions, involving the loan shark situation, that he was unable to get off. He pleaded his intention to come here to testify as to another matter, not as to this thing. We knew nothing about this proposition then—but as to another matter.

I then called Mr. McConnell. I saw Mr. McConnell. He is on the floor just below me, and I talked to him, and I told him the situation that I was in, that I did not
624 want to ask to have this case, this Jackson Park case, put over. We were all ready to try it, and the Court's engagements were such, if it could be avoided, and I told him of the situation so far as the jury was concerned. I said to him that I would like to, and I thought that he could safely agree, that if Agnew were here he would testify as to certain things that I wanted to have him testify about, substantially the same thing, along the same lines that Mr. Osserman had been examined about in the depositions before that; and he said that he thought that would be all right, to prepare the stipulation.

I did prepare the stipulation and gave him a copy the next morning. We happened to be finishing the taking of the pre-trial deposition of Mr. Dick Salkin that morning, which was on the 10th. I gave the original and a copy to him, for his signature. He later informed me that it was O. K. except that he wanted to present some interrogatories which he wanted Mr. Agnew to sign, and to which we could stipulate that he would answer if he were here, and if those interrogatories were ready. He said he did not have them formed, and would give them to me later. I haven't received them, although I know
625 Mr.—there is no criticism on that account, as Mr. McConnell has been busy; but had I known of the bringing up of this Marx situation, and the affidavit that had been made by Mr. Salkin in that case, with respect to which Mr. Agnew had made an affidavit also, that is, in opposition, giving his version of the conversations, I would have certainly presented that situation to your Honor if Mr. McConnell had advised me of the fact that he intended to take up this Marx situation, and I knowing anything about it prior to that time, I believe that your Honor would have given consideration to the appeal.

I talked with Mr. Agnew on Saturday by long distance, and he is on the jury, and I understand that the case will take some time; so it would be impossible to have him here.

This is another situation. The plaintiffs are here in this case, Mr. Salkins here, he can testify as to what the conversations were. Those conversations happened eighteen, seventeen years ago. Salkin's testimony was more

than his affidavit. No one else's testimony probably could be much more than his affidavit; probably couldn't have any recollection. In fact, he stated that he had no
626 recollection except as there were facts stated in the affidavit, and the affidavit was made, not at the time the conversations were had, but after a year in some instances, and two years in other instances, after the conversations were had. All he would know was that at that time he thought he was stating the facts. So I am asking, appealing to the discretion of your Honor to consider this, and your Honor does have discretion as to the extent of whether you go into any other collateral matter. And I would like to read, it will only take a minute, some language from Corpus Juris which I think is very applicable to this situation, and it is supported, I think, by the authorities, and what should be taken into consideration in these things.

"Although complicated by the exercise of volition, it is still a proposition of experience, exemplified in the creation of habit and consequently of character, that a person is more apt to do than not to do under similar circumstances what he has done before. It is equally deducible from experience that in proportion as volition is eliminated identical conduct results from similar stimuli
627 and that, as in other parts of the natural world, similar causes produce like results. The doing of similar acts or the occurrence of similar events is to that extent probative, on an issue as to whether a particular act was done by the same person or a like occurrence happened at another time. But experience also demonstrates that the inference is in itself a weak one; that men do not invariably or even in the great majority of instances do as they have done before, where the conditions are apparently similar, and that, still more often, the absence of a former element or the presence of a new factor in a psychological or physical combination of causes suffices to produce a very different result. Courts have felt that in such cases the jury could not well be permitted to consider the inference at all without giving it undue importance; that, so far as the consideration of similar acts or occurrences had weight, it would probably be over-estimated. They have also realized the practical inconvenience of trying a number of collateral issues at the same time, and the

mischief of protracting trials, surprising, and other-
628 wise prejudicing litigants, by permitting the use of evidence so well calculated as to bewilder and mislead a jury. Hence the rule is that it is within the discretion of the court, except under special circumstances, to reject evidence of former acts or occurrences as proof that a particular act was done or a certain occurrence happened. * * *"

Now, I believe that states the law, and here we have a situation which by this simple affidavit or testimony of Mr. Salkin, from his affidavit, may lead to going into all those different issues involved in that case, or a large part of them, and prolong this case and will be of very little importance because it involves a different sort of thing than what the plaintiffs are complaining about here; and I think I have stated my feelings about it.

629 Mr. McConnell: If the Court please, I am not sure whether I am accused of unfairness here in dealing with Mr. Agnew's testimony or not. I do not feel that I could do any more than I have done.

I told counsel that I would be willing to stipulate with him that Mr. Agnew would deny certain things that he wanted in his affidavit. Now, further than that I don't know what I can do with reference to Mr. Agnew.

Now, on this particular issue, as counsel stated, Mr. Agnew I think made an affidavit, that is my recollection of it, and I am willing to stipulate with counsel that that affidavit can be introduced here if he wants to admit it, which is Mr. Agnew's position with reference to these conversations.

Now, what have we got here? We have got a conversation which Mr. Leo Salkin had with two or three people, not more than that. That is all there is. It is a conversation to which he testifies to affirmatively, which they can deny. That is an issue of fact in that particular matter. There is not anything more in issue than that, his denial of Mr. Salkin's statement. They can cross-examine Mr. Salkin.

The argument on the law, I think, concedes the
630 whole position; that is, he says that it is a matter of discretion. He says that he avoids the main issue, which is what is the proof directed to. Here we have in that testimony these defendants together, taking a position to an issue which is in many respects similar to the

issue in this case, with reference to competing theatres which are not in the conspiracy which we allege here.

Now, bear in mind, if the Court please, the relative positions of these litigants in this lawsuit. Here is a little theatre fighting to present its case in court, fighting to prove a thing which it knows exists, and feels exists in the business, and is affected by.

Your Honor can recognize the difficulties of proof, showing the combination and agreement and tacit understanding between these defendants.

Now, we have here in this case evidence, something which goes to the very heart of the thing. We find these defendants together telling an outside party, who is not interested in this case, telling him that between the defendants they are following the lead of Balaban & Katz in keeping these two big de luxe houses out of competition with Balaban & Katz. It is hard to conceive of
631 how more cogent evidence of the existence of a tacit understanding and conspiracy could be produced in any court.

Now, this is not just a question of what he mentioned in his reading from Corpus Juris. This is a question of the proof of a conspiracy, which the authorities say, and he does not even contest that issue, which the authorities say you can go back into history as far as you want, and once you find it established, then the burden of proof is upon them to show that they walked out of the conspiracy.

What is the conspiracy alleged in this case?

They attempt to confine me, and define it. We are alleging that we are up against Balaban & Katz and Warner Bros. here, all independent theatre operators, but we are one of them; so were the two Marx Brothers, were independent theatres in those days in the sense they were not affiliated with the producers and the distributors of motion pictures. It is the same thing. It goes on. It takes different manifestations and different forms as it develops, but it is the same thing, and we go back there and we find them nesting together and meeting this outside competition in that way.

632 I say to your Honor that it is exceedingly cogent proof here of the very heart and issue of this case. We brought them together, and the discretion of the Court is to see that the litigant gets his day to prove it.

I submit that the motion should be denied.

The Court: I don't understand you mentioned Mr. Agnew's name any other place except in his testimony, isn't that true?

Mr. McConnell: That is right.

633 Mr. O'Brien: If the Court please, I had not intended to make, nor am I making now, any motion on behalf of my defendants in respect to this matter, certainly no special motion. But I am interested in seeing, in the absence of the jury, that your Honor understands our position as to the trial of a collateral issue, and more particularly that you right now understand our position as to the statement which Mr. McConnell just made, that here you have all of these defendants together, and then following the lead of B. & K.

I want to call attention to the fact, lest you have any misapprehension about that, that neither Warner Bros. nor Vitagraph were parties to that suit, to the fact that they sold these distributors their product, and to the fact that First National, in 1926 and '7, and for two years after the time of the alleged conversation, was a separate, independent, wholly unaffiliated company, no connection whatsoever either with Vitagraph or Warner, and no charge, no statement in that suit or anywhere else that it ever was connected, and it wasn't.

Mr. McConnell, in his statement that those folks with whom the alleged conversations were had, were fol-
634 lowing the lead of B. & K., really focuses and points up Mr. Adcock's argument about the need for going thoroughly into that collateral matter to meet an inference which otherwise might be very harmful.

I have looked at the record, too. Mr. McConnell does not tell you about existing contracts, franchises which I note some of those people had made before anybody even knew that the Granada or Marbro was even about to be built, contracts under which they had engaged to give their product to the B. & K. houses, which could use all of the good product which they had, and which contracts were in full force and effect at the time when these new theatres were demanding the best of the product.

Now, that is merely one illustration of the facts and circumstances which would have to be inquired into, and which the witnesses would have to be examined about, to meet that kind of inference, that is the trial of a separate suit, far more complicated than this one.

As I say, we sold them product. We sold them the major portion of our product. I have no direct interest in it, but I agree that it is not a matter on which we
635 should sit around here for four or six weeks trying a Marx Brothers suit, in which the papers alone, without any testimony, take up, as Mr. Adcock says, a bushel basket, besides the voluminous record.

Mr. Adcock: I do not wish to take any time, merely to call attention to something, and perhaps Mr. O'Brien has referred to it, and that is this: That these conversations that Mr. Salkin talked about, in 1926, were with respect to getting product, that was in the summer of 1926, and was a product with reference to the Granada Theatre, which was not opened until September 28th, 1926; the conversations in 1927 were principally, I believe, with respect to product for the Marbro Theatre, which was not opened until May 1st, 1927. Now, as mentioned by Mr. O'Brien, it would be necessary to go into what the situation was. Here were new theatres that were coming into an area where theatres had been operated for a number of years, for a long time, and seeking to get product, that is, A pre-release product, suitable for their theatres and in competition with other A theatres in that neighborhood.

The Court: I think Mr. McConnell is entitled to
636 produce that sort of evidence, in order to prove the conspiracy that he alleged in this case.

The motion of Mr. Adcock will be overruled, with the understanding that the affidavit of Mr. Agnew may be introduced.

Mr. McConnell: That is perfectly all right, your Honor.

The Court: All right. Bring in the jury.

Mr. Seeley: Your Honor,—

The Court: Wait a minute. I thought we had finished this. Are you starting all over again?

Mr. Seeley: No, sir, not at all.

The Court: Never mind; keep the jury out.

Mr. Seeley: I asked to have Mr. Salkin come back today for cross-examination. I now find that so far as I am concerned it is not necessary to have him come back, and I think he should be notified so that he will be put to no inconvenience, unless other counsel want him back.

Mr. O'Brien: I have no questions.

Mr. Adcock: On that condition, as to Mr. Agnew's affidavit, there may be one or two other affidavits which

bear on that proposition, which I might want to offer if they bear on the subject matter of Mr. Salkin's tes-
637 timony.

The Court: In contradiction of what Salkin testified to?

Mr. Adcock: Yes.

The Court: What objection is there to that?

Mr. McConnell: None whatever.

The Court: Very well. Now, is it all right to bring the jury in?

Mr. Seeley: Have you some way of getting in touch with Mr. Salkin?

Mr. McConnell: No, I haven't.

The Court: Isn't he your brother (addressing Mr. Richard Salkin)?

Mr. Richard Salkin: Yes.

The Court: You can get in touch with him.

Mr. Seeley: Can you get in touch with him and tell him he doesn't have to come down?

Mr. Richard Salkin: Yes.

Mr. Adcock: May it be stipulated, before the jury, that Mr. Leo Salkin is a brother of Mr. Richard Salkin, who has testified in this case?

Mr. McConnell: That is a fact. I don't know of any reason why I should not stipulate to that.

Mr. Adcock: It does not appear in the record so far.
638 The Court: I thought either one of them said he was a brother of the other.

Mr. Adcock: I don't think so.

The Court: Well, there is no objection to that.

Mr. Adcock: It might have been earlier.

The Court: There is no secret about that, is there?

Mr. McConnell: None whatever.

Mr. Adcock: You may be correct, your Honor.

The Court: All right. I was certain they were brothers.

639 (And thereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: Mr. Adcock wants to stipulate before the jury that the witness Salkin who testified here the other day, is a brother of the witness Salkin who heretofore testified in the case.

Mr. Adcock: That is Leo B. Salkin, I think, or Leo R.; or Leo B.

The Court: Well, the Salkins, both of whom have appeared here, are brothers. That is what you want to get over to the jury, is that right?

Mr. Adcock: Yes, sir; that is the fact.

640 Mr. McConnell: We were reading from the deposition of Mr. Allen Usher; and I do not believe anything further than what I have read is of any materiality here, is relevant to the subject on which we have examined the witnesses.

The Court: As I understand it, those are all the questions you want to read?

Mr. McConnell: That is right.

641 Mr. McConnell: I will now read the deposition of Mr. Gorelick, first:

Direct Examination by Mr. McConnell.

Q. Will you state your name, please?

A. Sam Gorelick.

Q. And where do you live, Mr. Gorelick?

A. 4944 North Christiana, Chicago.

Q. And what is your business or occupation?

A. I am now Branch Manager of the Chicago—the local Chicago RKO office.

Q. And where is that office located?

A. 1300 South Wabash.

Q. What is the business of RKO?

A. Distributors of motion picture film.

Q. And do you know what their connection is with Radio-Keith-Orpheum Corporation?

A. No, I do not.

Q. Isn't it a fact that they are a wholly owned subsidiary?

A. I would not know.

Q. Of the other corporation?

A. I wouldn't know.

Q. You have no knowledge of that whatever?

642 A. No, sir.

Q. Who are the officers of RKO?

A. Ned Depinet, President of RKO Radio Pictures. Beyond that I could not answer.

Q. Don't you know who the Treasurer of the corporation is?

A. I noticed in the trade papers the other day that Mr. Kingsbury had just been made Treasurer of the Company.

Q. How long have you been with the Company?

A. Thirteen years.

Q. And have you been Branch Manager all of that time?

A. No; just in the last two years.

Q. And what was your position prior to the last two years?

A. Salesman and sales manager.

Q. In what territory?

A. In the Chicago territory.

Q. What were your duties with the Company as salesman and sales manager?

A. As sales manager, supervising deals sold by the salesmen in the Chicago territory.

Q. Did you ever make any deals yourself; did you do any selling yourself?

64 A. Yes.

Q. And you were salesman all of that time, prior to your appointment as Branch Manager, is that correct?

A. That is right.

Q. What was the exact year you came with the Company?

A. In between 1930 and 1931.

Q. And what had you been doing prior to that time?

A. I was salesman for—salesman and office manager for United Artists in Chicago.

Q. Here in Chicago?

A. That is right.

Q. And how long were you in that position?

A. One year.

Q. Did you have any business experience prior to that time?

A. Yes.

Q. What company were you employed with prior to that time?

A. F. B. O., RKO Radio Pictures.

Q. And in what capacity?

A. Salesman and booker.

Q. And how long?

A. Ten years.
Q. And here in the Chicago district?
A. Yes."
And Mr. Seeley's question was:
644 Q. What is the F. B. O.?
A. Film booking office.
Mr. McConnell: Q. Now, does that represent all of your business experience?
A. No.
Q. All right. Who were you employed by prior to the time that you went into the field?
A. Fox.
Q. And for how long?
A. Three years.
Q. And in what capacity?
A. Booker.
Q. Here in the Chicago Exchange District?
A. Yes; also in Chicago.
Q. Were you employed by anybody in the film industry prior to that time?
A. Yes.
Q. And who?
A. Paramount.
Q. And for how long?
A. One year.
Q. And in what capacity?
A. I was in charge of the Maintenance Department.
Q. Maintenance Department?
A. Yes.
Mr. Adcock: Is that one year?
A. One year.
645 Mr. McConnell: Q. And prior to that time did you have experience?
A. With the Mutual Film Corporation.
Q. And how long?
A. About two and a half years.
Q. In what capacity.
A. Contract clerk.
Q. And does that represent your start in the film industry?
A. Yes.
Q. All right. Just so we can not skip the computation, when was the first year in which you entered the film industry here in Chicago?

A. I will have to add it together. Oh, I would say about 27 years.

Q. You came in about 1916?

A. About that time.

Q. In all that time you never heard of any connection between the RKO Company or RKO Radio Pictures Company and the Radio-Keith-Orpheum Corporation?

A. Yes, there is a connection, but what the connection is, I could not answer.

Q. Do you know who the officers of the Radio-Keith-Orpheum Corporation are?

A. Mr. Rathvon is the President of RKO, Radio-Keith-Orpheum, I believe.

646 Q. Do you know any other officers?

A. No, I do not.

Q. Radio-Keith-Orpheum Company is a producing company, is it not?

A. Radio-Keith-Orpheum? That I could not answer.

Q. Doesn't produce pictures?

A. That I could not answer.

Q. Well, you sell pictures, do you not?

A. We sell pictures for RKO Radio Pictures.

Q. All right. What pictures does RKO Radio Pictures distribute, what companies?

A. We are, our local offices are distributors of film made and distributed by RKO Radio Pictures. Beyond that I could not answer, because I don't know.

Q. Then your company not only distributes film but produces film, is that correct?

A. That is right.

Q. Do you know how many feature pictures your Company produced in the last year?

A. About thirty-five pictures.

Q. That would be for the 1942-43 season?

A. No. For 1943. For the 1942-43 season we produced thirty-seven, forty pictures.

Q. The 35 pictures was 1943-44; correct?

647 A. No. 1941-42 season.

Q. Do you know how many you produced the year previous to that?

A. No, I don't. I would have to venture a guess.

Q. Well, let us know your best guess.

A. Oh, I would say about thirty-five.

Q. And how about the year prior to that?
A. I could not remember.
Q. Well, do you think it was more or less than that?
A. I imagine about the same number.
Q. As a matter of fact, it runs about the same number from year to year, does it not?
A. Practically.
Q. Who, in your company, has charge of the negotiations for buying, or, rather, from your point of view, selling film to the different exhibiting houses here in the Chicago district; who is in charge of that department?
A. In our local office?
Q. Yes.
A. Mr. Osserman, who is our District Manager.
Q. Do you work under him?
A. Yes.
Q. And with him?
A. I work under him and with him.

648 "Q. So that in general you are familiar, in the course of your duties with what is done in the selling of film here in this Exchange District?
"A. Practically.
"Q. Now, when you sell film here in Chicago for Loop release, what do you understand by Loop release?
"A. Downtown showing, first run showing.
"Q. And how many first run houses are there here in the city of Chicago?
"A. Well, we have the Palace, the RKO Palace; there is the RKO Grant, to whom we sell our product first run.
"Q. Well, there are other first run theatres?
"A. There is the Chicago Theatre, the United Artists.
"Q. Wait a minute. The Chicago Theatre is owned by whom?
"A. Balaban & Katz.
"Q. All right. What is the next?
"A. United Artists.
"Q. That is owned by whom?
"A. Balaban & Katz.
"Q. All right.

649 "A. I assume they are owned by Balaban & Katz, because those are the people with whom you deal for the pictures. There is the State-Lake.
"Q. Yes.

"A. The Roosevelt.
"Q. Wait a minute. Who owns the State-Lake?
"A. Balaban & Katz.
"Q. Yes.
"A. Roosevelt Theatre, that is Balaban & Katz; the Apollo, owned by Balaban & Katz; the Garrick, owned by Balaban & Katz; the Woods, owned by S. & S.; the Oriental, operated by Mr. Costello. What his official title is I could not say.
"Q. Is that all of them?
"A. That is all the first runs.
"Q. There is a theatre called the Grand Theatre, is there not?
"A. I gave you that as the second theatre. There is the RKO Palace and the RKO Grand, whom we sell our pictures to.
"Q. Now, on those theatres, the Woods and the Oriental are not what you call first run theatres, are
650 they?
"A. They do run a number of pictures first run. In fact, the Woods Theatre does run all pictures first run, to my knowledge.
"Q. You designate them a first run theatre, then?
"A. Yes, sir.
"Q. The same as the Roosevelt or Apollo or the Garrick?
"A. Yes, sir.
"Q. How about the Grand Theatre?
"A. The Grand?
"Q. Yes.
"A. That theatre now plays all pictures first run, all pictures first run.
"Q. So you term that a first run theatre?
"A. Yes, sir.
"Q. And the Palace, how about the Palace?
"A. That is a first run in Chicago.
"Q. You sell your product to the RKO Palace and the Grand Theatre, do you not?
"A. That is right. We also sell some pictures to the Woods, and we sell some pictures to the Oriental.
"Q. Well, the Palace and the Grand are theatres
651 which are owned by your company?
"A. That is right, sir.

"Q. Well, what do you call your first run; how would you describe your first run, Loop run?

"A. A first run theatre would be a theatre which plays pictures ahead of any other theatre in a given territory, or in a given town, I should say.

"Q. Do they have a minimum admission price for the Loop run?

"A. No, there is no minimum admission price for the Loop run.

"Your contracts do not stipulate the admission price?

"A. We do stipulate the admission price, based on the sale of the picture. We raise our admission price on some pictures and lower it on others, depending upon the value of the picture.

"Q. Who has the contracts; who has possession of the contracts whereby the different theatres are licensed to exhibit your pictures?

652 "A. We have them in our office."

Mr. McConnell: I am leaving out the colloquy.

"Your statement that the admission prices were not designated, not fixed, for the Loop run, that, of course, is subject to whatever the contracts themselves show, is it not?

"A. That is right.

"Q. Your answer would agree with whatever your contracts show?

"A. That is right.

"Q. Now, after the conclusion of the Loop run, which you have described as the run prior to any other theatres in the Chicago District—that is correct, is it not?

"A. Yes.

"Q. Is there a so-called waiting time or dead time after the conclusion of a Loop run, before the picture can be played in any other theatre?

"A. Well, I would not term it dead playing time. It is clearance that we allow a theatre based on—its admission price based on the price for the picture, which is

653 usually a three week clearance.

"Q. Well, it is always a three weeks clearance, isn't it?

"A. Yes. We allow the downtown theatres to have that three weeks clearance to protect our investment.

"Q. That three weeks, that is for the purpose of protecting your investment?

"A. That is right, and the theatres' investment, being that we sell our own theatre.

"Q. And your investment is also represented by the fact that you have a percentage, do you not, of the take of the Loop theatre—

"A. That is right.

"Q. (Continuing)—that you license?

"A. That is right.

"Q. So to protect that investment, as you say, you grant the three weeks clearance?

"A. That is right.

"Q. Before the second run of the picture?

"A. That is right.

"Q. Now, after three weeks clearance has expired, after the conclusion of the Loop run of the picture, what is
654 the next run of that picture?

"A. The next run is the Uptown.

"Q. Who owns that theatre?

"A. Balaban & Katz.

"Q. That is what is known as an A pre-release house, is it not?

"A. No, it is known as a theatre that plays in the fourth week after downtown showing, or sometimes termed as an A pre-release theatre.

"Q. What are the other pre-release theatres besides the Uptown?

"A. There is the Marbro.

"Q. Who owns that theatre?

"A. Balaban & Katz. There is the Capitol, or the Avalon Theatre, owned by Warners. There is the Capitol Theatre, owned by Warners. There is the Tivoli Theatre, owned by Balaban & Katz. There is the Southtown Theatre, owned by Balaban & Katz. There is the Riviera Theatre, owned by Balaban & Katz. There is the Granada Theatre, owned by Balaban & Katz. The Varsity,
655 owned by Balaban & Katz. There is the Harding, owned by Balaban & Katz; and the McVickers Theatre, owned by Jones, Linick & Schaefer.

"Q. Jones, Linick & Schaefer?

"A. I imagine that is the corporation name.

"Q. Is that all of the A pre-release houses?

"A. May I look at that list again?

"Mr. Adcock: I can give them to you. Uptown, Marbro, Avalon, Capitol, Tivoli, Southtown, Riviera, Granada, Varsity, Harding, and McVickers.

"The Witness: I believe that is all.

"Mr. McConnell: Eleven is all.

"Q. Isn't it a fact that the Jones, Linick & Schaefer people have a management contract with Balaban & Katz?

"A. I wouldn't know that.

"Q. Aren't their pictures contracted through Balaban & Katz?

"A. Pictures are contracted through Johnnie Jones. All deals, all transactions, and even payment to the best of my kowledge is made through Jones, Linick & Schaefer.

"Q. How long does that A pre-release run last for
656 the exhibition of a picture?

"A. It runs the fourth, fifth and sixth weeks after downtown showing.

"Q. Then it is a three week run?

"A. A three week play off.

"Q. And the theatre can play the picture in those three weeks any—what is the minimum time it must play the picture in three weeks?

"A. I don't understand your question.

"Q. What is the minimum time, exhibition time?

"A. Seven days.

"Q. Seven days?

"A. Yes.

"Q. So that after the seven days the picture cannot be exhibited by any other theatre prior to the expiration of the three weeks period?

"A. While I mentioned these eleven theatres as being A theatres, the Capitol will play the picture after the Avalon and the McVickers will play the picture, and many times the Harding and Varsity will play after the Uptown and Marbro theatres; so, in reality, there is not a three week clearance.

657 "Q. Well, you mean by that that you license these different theatres in different weeks of A release?

"A. That is right.

"Q. First, second or third week of A pre-release?

"A. Yes; as some of those theatres that I mentioned.

"Q. A house that was licensed in first week of A pre-release—

"A. (Interrupting)—Will play in A—in first or second week or third week.

"Q. Or third week?

"A. And forfeit their clearance to the Avalon, rather the Capitol, which plays after the Avalon, or McVickers,

which plays after the Uptown, or Marbro, or the Harding which plays after the Marbro and Uptown.

"Q. But so far as the third run theatre is concerned, the third run cannot play prior to two weeks after conclusion of the A pre-release run?

"Mr. Seeley: Would you wait just a minute? Wait just a minute.

"A. That is not correct.

658 "Mr. Seeley: You are now referring to third run as B?

"A. As a B theatre?

"Mr. McConnell Yes.

"The Witness: I see. Those cannot play until the conclusion of the third, that is the sixth week of general release.

"Q. It would be the sixth week of general release?

"A. Seventh, after sixth week.

"Q. Six weeks after conclusion of the Loop run, you mean?

"A. Of Loop run.

"Q. Now, after the conclusion of the A pre-release runs, first, second and third week, what is the next run?

"A. The next run, the theatres that play in seventh or eighth week of release have—they are termed by the trade as B theatres.

"Q. Can you name the B theatres for us?

"A. Oh, they are numerous. There is the Nortown, owned by Balaban & Katz.

"Mr. Adcock: Wait just a minute.

"The Witness: The North Shore, owned by Balaban & Katz. There is the Gateway, owned by Balaban &

659 Katz. The Pantheon, owned by Balaban & Katz. There is the Lido Theatre, owed by the Illinois-Indiana Theatres. There is the Montclare Theatre, owned by Bill Charukas. There is the Lamar Theatre, owned by S. & S.; the Sheridan Theatre, owned by S. & S. There is the Senate Theatre, owned by S. & S.: ————, owned by B. & K., Balaban & Katz. There is the Piccadilly, owned by Schoenstadt & Son. There is the Regal Theatre, owned by Balaban & Katz. There is the Metropolitan Theatre, owned by Warner Bros.; and there is the Tower Theatre, owned by Balaban & Katz.

I believe I have them all. I am not certain.

"Q. Only thirteen of them?

"A. Offhand I could not answer as to the number of them. Do you have a list?

"Mr. McConnell: I think maybe I do have a list.

"The Witness: All right. The Belmont, is that one?

"Mr. McConnell: The Belmont, you have not 660 named?

"The Witness: Belmont, that is owned by B. & K.

"Q. Did you name the Century?

"A. No. The Century, owned by B. & K. The Monroe Theatre, owned by Sam and Eddie Trinz.

"Q. Well, we have sixteen. Can you think of any others? How about the State-Lake?

"A. The State-Lake is A downtown, first run downtown.

"Q. Stratford?

"A. Stratford Theatre, owned by Warner Bros.

"Q. How about the Regal?

"A. I gave the Regal when I gave the Metropolitan. I tried to cover the territory from the northwest to south; and it is hard to remember them all.

"Q. The Paradise Theatre?

"A. The Paradise, owned by Balaban & Katz.

"Q. How about the Sheridan?

"A. I gave that.

"Mr. McConnell: I guess we got them all.

"Q. Now, what is a B run; how many weeks is the B run?

"A. The B run is seventh and eighth weeks after 661 downtown showing.

"Q. What is the minimum time a theatre exhibits pictures in B run?

"A. From seven days—I should say from four to seven days each.

"Q. Would that minimum vary according to your contracts, or is there an absolute minimum of four days?

"A. I take that back. Some B theatres will play pictures five days and two, and may run pictures seven days, and may run pictures three and four days, based on the sale of the picture. If it is an exclusive picture, an exclusive picture will play seven days. The next expensive picture will be five days, and the cheaper picture two to three days.

"Q. Do they have options as to their run, as to the length of time they shall exhibit the picture, or do you stipulate as to that in the contract?

"A. We stipulate that in the contract, as the sale is made, based in the value of the picture.

"Q. Now, in your A and your B pre-release houses,
662 pictures for exhibition in those houses, do you stipulate a minimum admission price at which those pictures shall be played?

"A. Yes.

"Q. And if the theatre violates or varies from that minimum admission price, then they lose that run, do they not?

"A. We have not had any violations that I can remember.

"Q. Well, assume that you did have a violation, they would lose that run?"

Mr. Seeley: I will waive the objection.

The Court: I think we ought to sustain the objection to that.

Mr. Seeley: The answer is such that the objection wouldn't make any difference, Judge.

Mr. McConnell: Well, do you want to skip all that colloquy there over the objection?

Mr. Seeley: Yes.

Mr. McConnell: Dropping down to the bottom of pages 143. (Resuming reading:)

663 "Q. Well, would your answer be governed by the term of the contract as the best evidence?

"A. Yes.

"Q. Now, in the sale of pictures in the A and B pre-release runs, are those pictures sold on percentage for those runs?

"A. Some pictures are sold on percentage.

"Q. Now, what is the next run after the so-called B run?

"A. C week of release, or eighth week after downtown, ninth week after downtown showing.

"Q. And how long does the picture granted that run play the picture, how many days?

"A. Well, that can vary from one to four days, five days, depending upon the value of the picture.

"Q. That is something stipulated in your contract?

"A. No, it is not. It is when—the price will determine the—the price and number of days on the contract will determine the run.

"Q. So that you do stipulate in your contract
664 how many days a picture shall be exhibited—

"A. That is right.

"Q. (Continuing)—in that run?

"A. Yes, sir.

"Q. Now, the next run is how designated, after the C pre-release run?

"A. Ten weeks after downtown showing.

"Q. Is that what is known as first week of release?

"A. First week of release.

"Q. And the successive weeks of release follow after that?

"A. That is right."

Mr. McConnell: Now I am going to skip this West Side release, unless you want it in.

Mr. Seeley: That is all right with me.

Mr. McConnell: Going to page 146. (Resuming reading:)

"Q. Who handled the negotiations for the licensing of film between your company and Balaban & Katz?

"A. Mr. Osserman.

"Q. Were you present when those negotiations were had?

"A. I was not.

665 "Q. And who handled the negotiations for the sale of film to Warner Bros.?

"A. Mr. Osserman.

"Q. Were you present at any of those negotiations?

"A. I was not.

"Q. What theatres did you yourself personally negotiate with for the licensing of film?

"A. Well, this is a broad statement. I would say most every theatre in the city, except Balaban & Katz, Warner Bros., S. & S.,—that is about all.

"Q. Was there a particular time of the year in which you entered into those negotiations?

"A. Prior—

"Q. In other words, was there sort of a buying season?

"A. Prior to the consent decree there was a buying season.

"Q. And do you know when that consent was entered? It was 1940, wasn't it?

"A. It was about two years ago.

"Q. And what was that buying season, prior to the consent decree?

666 "A. Oh, it would start in July and perhaps end around the first of the year.

"Q. And pictures were bought for the exhibiting season, were they not?

"A. That is right.

"Q. And what was that exhibiting season?

"A. Well, it would start with September, 1st, and carried over to the following year, August 31.

"Q. Would you say that you were in charge of the sale of the pictures to the theatres here in the Chicago District, aside from these groups you mentioned, B. & K., and these others?

"A. For several years prior to that time I had a definite territory, for which I was solely responsible, subject to approval of the deal by our Home Office.

"Q. Mr. Gorelick, you said at one time you had a particular sales territory for which you were responsible. Now, what was that territory, and what was the time?

"A. Well, I have had the North Side—I couldn't mention the years, because it is just hard to explain be-

667 cause they interlap and overlap, and it would be hard to remember the exact years. I did have the North Side at one time. I have had the West Side, and I have had the South Side territory, and I have—well, I might have been transferred from the West Side back up North, and I might have had more years in the North than I had in the West or the South, or it might have been I had more in the South and less in the North. It would be hard to set the years.

"Q. Well, when did that responsibility for certain sales territory terminate; that is, when did you cease to be responsible for certain territory?

"A. In any individual section?

"Q. Yes.

"A. Well, that would be hard to say.

"Q. Well, are you responsible now for such certain territory?

"A. Now, I am responsible for all the sales in the Chicago office.

"Q. Aside from these ones you have mentioned that Mr. Osserman takes care of?

"A. No. I now have jurisdiction over Balaban &
668 Katz, Warners, and S. & S., except that Mr. Osserman makes the deals.

"Q. I see. In covering this territory what was your usual procedure? Did you go up to see the theatres and negotiate with them for the theatres for the coming exhibiting season?

"A. That is right; or they would come to the office.

"Q. Did you have a downtown office to which exhibitors came?

"A. Yes, sir.

"Q. Well, what was the usual procedure, for you to go to them or for them to come to you?

"A. Either way. If it was more convenient for the exhibitor to come to our office, fine; if not, we went to their theatres.

"Q. Well, did you not notify them when you were ready to negotiate about film—how was that negotiation started?

"A. Well, we would hold our conventions at some given spot, National Convention, company convention, which the exhibitors were familiar with; and upon our return from the convention our publicity department in the Home Office would set up a schedule of our pictures for the cur-
669 rent or coming season, and that would be published in trade magazines.

"Q. So that they got their word through the trade publications, is that correct?

"A. That is right. Then our salesmen would go to work.

"Q. Prior to that time you would not enter into negotiations with the individual theatres for their product?

"A. No.

"Q. Well, now, are you familiar with how, even though you were not present at the actual negotiations, were you familiar with how the contracts for the exhibition of film were negotiated with Balaban & Katz, and Warner Bros. and S. & S. and these other groups that you have mentioned?

"A. No, I am not familiar with it.

"Q. Well, do you know where those negotiations were held?

"A. But I assume about the same as they are with the average theatre man, and that is across the desk.

"Q. Isn't it a fact that Balaban & Katz would write

you a letter asking for a certain protection schedule
670 and a release of pictures each year for their various theatres?

"A. To my knowledge, in the last two years, since I have been Manager, there have been no letters. Any discussions about clearance was made at the time of the deal. I have sat in with Mr. Osserman on several deals with Balaban & Katz, with Warners, and all negotiations were discussed face to face.

"Q. Well, prior to two years wasn't that the usual procedure?

"A. I could not answer that.

Mr. McConnell: I would like to omit this inquiry about files of documents and to go over to the top of page 153.

Mr. Seeley: All right.

Mr. McConnell: (Resuming reading.)

"Q. Now, you say you sat in on some of these deals with Warner Bros. and Balaban & Katz. When was that?

"A. In the last two years.

"Q. Well, then, negotiating for the licensing of pictures, for instance to Balaban & Katz, when you sit down and talk with them, you talk about all their theatres,
671 do you not?

"A. That is right.

"Q. And you make one deal with them for their whole exhibition program?

"A. No, that is not right. We do not sell Balaban & Katz any of our pictures at the Tivoli or Southtown. We do not sell them at their Regal Theatre, nor do we sell them at their Central Park Theatre; nor do we sell our pictures down town for any of their theatres.

"Q. In the Loop, you mean?

"A. That is right.

"Q. None of your pictures sold in the Loop?

"A. No, sir.

"Q. Well, that has not always been true, has it?

"A. That has always been true. Perhaps an occasional picture may be sold to Balaban & Katz. I remember offhand one picture that played at the Chicago Theatre. That was "Bringing Up Baby." That is the only picture—

"Q. "Bringing Up—"

"A. "Bringing Up Baby." That is the only picture that played.

"Q. "Bringing Up Baby?"

"A. Yes.

672 "Q. Well, that was not quite what I meant by my question. I meant that whatever theatre you sell of Balaban & Katz, you sell them all at one time; you do not make separate trips down to the theatre?

"A. That is right.

"Q. You have one license agreement to cover it?

"A. One deal.

"Q. One deal?

"A. Yes.

"Q. Now, when you are selling individual theatres, when you were selling individual theatres, prior to the time you became Branch Manager, you were familiar with those deals that had been made with Balaban & Katz before you went to see the theatres, were you not; at least you knew what the clearance provisions, and so forth, were already contracted for by Balaban & Katz?

"A. That is right.

"Q. So that you were not free at that time to sell subsequent run theatres playing time which had already been contracted for by Balaban & Katz?

"A. That is right."

Mr. McConnell: I want to skip this about "Pride
673 of the Yankees," unless you want it.

Mr. Seeley: All right. That is a film.

Mr. McConnell: Classification of pictures. I am going to skip to the top of page 159.

Mr. Seeley: Just a second, please. All right.

Mr. McConnell: Up on the top of page 159: (Resuming reading.)

"Q. Are you familiar with the company called Great States Company?

"A. I am familiar with the company; that is, with the people in the local Chicago office.

"Q. Do you sell to them?

"A. Yes.

"Q. And what is that organization, or company; what does the company do, do you know?

"A. They buy film for downstate theatres.

"Q. Do you know that that company is owned by and is a subsidiary of Balaban & Katz?

"A. So I understand.

"Q. Do you know how many theatres there are in that chain?

"A. No. I would have to venture a guess.

"Q. Well, there are a large number of theatres in the chain, are there not?

674 "A. Yes.

"Q. And those theatres are located in outlying sections like Peoria and towns around the Chicago Exchange District?

"A. That is right.

"Q. Now, you can get more money, can you not, for the prior exhibition of a picture than you can for the subsequent run of a picture; and the reason for that, of course, is the picture has more box office appeal before it is shown in the other theatres, isn't that right?

"A. More customers to choose from.

"Q. That is, more people who have not already seen the picture?

"A. That is right.

"Q. So, that Loop runs and the pre-release runs are of more value to a theatre exhibitor than a subsequent run?

"A. That is right.

"Q. And for that reason you charge and get more money?

"A. Yes.

"Q. When did RKO acquire the Palace Theatre, do you know?

"A. I couldn't give you the exact date.

675 "Q. Did you buy pictures for that theatre?

"A. Do we buy?

"Q. Well, yes, does your company buy pictures?

"A. Our distributing company buys—sells pictures to our theatre company.

"Q. You have a separate company, then, for the Palace theatre, is that it?

"A. No, no. Our theatre company in New York buys our pictures.

"Q. Well, what company is that? Isn't that Radio-Keith-Orpheum Company?

"A. Yes, sir; that is right.

"Q. Is that the same company that owns the Grand?

"A. Yes. I believe that is a partnership arrangement of Mr. Van Nomokis, or his associates, or and his associates."

Mr. McConnell. I am going to leave out about Van Nomokis being in the army.

Mr. Seeley: All right.

Mr. McConnell: (resuming reading:)

"Q. You do no buying, your company does no buying for the Palace?

"A. That is right.

676 "Q. Or the Grand?

"A. That is right.

"Q. Well, now, do you recall what the weeks of release were back in 1926 in the Chicago Exchange District?

"A. No, I don't.

"Q. Have you anything from which you can refresh your recollection as to that?

"A. No. As explained before, our records were all destroyed; that is, most of the older records were destroyed; and when we moved to our new quarters about two years ago I believe the earliest records we have on hand is the season 1935-6.

"Q. Don't you recall that the system of release was different than it is today?

"A. No, I couldn't—to be honest, I could not recollect that far back.

"Q. That is, you don't know whether it was or whether it was not different?

"A. That is right."

Mr. McConnell: That is all of that deposition.

Mr. Seeley: There was very short cross.

Mr. McConnell: Oh, was there? Pardon me. Do 677 you want to read that?

Mr. Seeley: All right. I will read Mr. Adcock's, too, shall I?

Mr. Adcock: I think under the rules the plaintiff has to read them.

Mr. McConnell: I would just as soon. All right.

Mr. Adcock: Yes.

Cross-Examination by Mr. Adcock.

"Q. In answer to some of the questions that were put to you, you stated that certain theatres were owned by certain people. You do not mean to say that you know whether they were owned outright or leased; or did you intend to mean merely that they were operated by them?

"A. That they were operated, and our dealings for those theatres had been with Balaban & Katz.

"Mr. Seeley: I have one question, too.

Examination by Mr. Seeley.

"Q. I thought that when you were asked about the time when theatres in B pre-release can play with reference to theatres in A pre-release, there was some con-
678 fusion?

"Will you tell me if this is a correct statement of the facts: The fourth, fifth and sixth weeks after the conclusion of Loop exhibition are known as the A pre-release weeks?

"A. Yes.

"Q. Theatres that play in that run ordinarily play a picture for seven days. There are some theatres in Chicago which are usually licensed to play in the first A week, some usually play in second A week, and some in third, is that right?

"A. That is correct.

"Q. A theatre which plays a picture in the first A week, then has fourteen days between the conclusion of its run and the first day of B pre-release, which is its clearance, is that right?

"A. That is right.

"Q. If, however, it plays in the second A week, then it only has seven days clearance?

"A. It only has seven days clearance.

"Q. And if it plays it in the third A week, then the B run follows immediately without any clearance?

"A. That is right."

679 Mr. McConnell: Will you turn to the Osserman deposition, please? (Reading from deposition:)

"Q. Will you state your name, please?

"A. Jack Charles Osserman.

"Q. And where do you live, Mr. Osserman?

"A. Blackstone Hotel.

"Q. And what is your business or occupation?

"A. I am District Manager for RKO Radio Pictures Corporation.

"Q. And what is your business address?

"A. I headquarter at 1300 South Wabash Avenue.

"Q. How long have you been District Manager for that Company?

"A. Two years, sir.

"Q. And how long have you been with the Company altogether?

"A. I am starting on my thirteenth year.

"Q. And what positions did you hold with the Company prior to becoming District Manager?

"A. I came here as a salesman, remained as a salesman for seven months, and then became Branch Manager until two years ago when I became District Manager for the Company.

"Q. And your territory was the Chicago Exchange 680 District, is that right?

"A. No, it comprises the St. Louis territory, Kansas City territory, Milwaukee territory, and the Chicago territory.

"Q. That is as District Manager?

"A. Yes, sir.

"Q. And what as Branch Manager?

"A. As Branch Manager, the Chicago territory.

"Q. What does the Chicago territory include?

"A. It includes Northern Illinois, the City of Chicago and suburbs, and northern Indiana.

"Q. And how long were you Branch Manager?

"A. A little over ten years.

"Q. Prior to your coming with this Company, were you in any connection with the film industry?

"A. Yes, sir.

"Q. With what company?

"A. I was with Universal as Branch Manager, for twelve years.

"Q. At what location?

"A. Washington, Cleveland, Wichita, Kansas, Kansas City, Des Moines, Iowa.

"Q. Not in Chicago?

"A. No, sir.

"Q. Was that your first contact with the film in-
681 dustry, with Universal?

"A. No, sir.

"Q. What other Company were you with?

"A. Pathe.

"Q. For what period of time?

"A. For a period of two years. I started in the motion picture business with Pathe, in Detroit, Michigan, and then went to Cleveland.

"Q. So that your first connection with the film industry was with Pathe?

"A. Correct.

"Q. Now, as to your present position, as District Manager, what are your duties in that position?

"A. My duties are to supervise sales of the four offices I have just mentioned, Chicago, Milwaukee, St. Louis, Kansas City, and likewise call upon a given number of important accounts in each of these branches, and to assist the Branch Manager in each office on sales, and in a general supervisory capacity, as far as the balance of the deals are concerned from each office.

"Q. Do you yourself negotiate the sale of film?

"A. Yes, sir.

"Q. And with what companies?

"A. I presume you are now talking about—con-
682 fining it to the Chicago area?

"Q. Yes; the Chicago area.

"A. Well, I do business with Warner Bros., Balaban & Katz, Great States and S. & S.

"Q. Great States is a wholly owned subsidiary of Balaban & Katz, is it not?

"A. I can not tell you that.

"Q. Do you have any information on that subject at all?

"A. No, I don't. Jules Bubens is the buyer for Great States and my negotiations are all with Rubens. There is never any reference to Balaban & Katz in Rubens office, nor likewise is there any reference to Great States in Balaban & Katz's office. I never call on them together. I may call on one week because, as pictures become available earlier, and I may call on Balaban & Katz outfit a little later on.

"Q. Well, you know of your own knowledge that that is so, though, do you not.

"A. I know there is a definite connection, but strictly through hearsay."

Mr. McConnell: You made a motion to strike the answer.

683 Mr. Seeley: Waived.

Mr. McConnell: (Resuming reading:)

"Q. The S. & S. group that you refer to, that is a circuit of theatres, is it not?

"A. Yes, sir.

"Q. Where is that circuit located, generally?

"A. Generally on the west side of Chicago, and the northwest side.

"Q. Do you know who the owners of that circuit are?

"A. I do business with Emil Stern, and I know that Ed Silverman and Sidney Spiegel are actively engaged in the outfit, and those are the only three men that I know connected with the outfit.

"Q. When you say you negotiate with these four companies, do you mean by that that you do that personally, or is that done under your supervision?

"A. No. I have up to now been doing it personally, under instructions from my immediate superiors in New York, whom I consult on deals.

"Q. Well now, who are your immediate superiors in New York?

"A. Walter Branson.

"Q. What is his position?

684 "A. Western Sales Manager.

"Q. Who else do you consult?

"A. That is all, sir.

"Q. But the actual negotiation for the sale of the film is conducted by you personally, is that correct?

"A. Yes, sir, with one exception. Occasionally Branson comes in from New York to give me a helping hand in case I cannot complete negotiations."

Mr. McConnell: Some colloquy there I am skipping.

"Q. In making your sale of films to Warner Bros., do you negotiate with them for films for all of their Chicago theatres, and at the same time?

"A. Yes, sir.

"Q. But you sell them one deal for their film requirements?

"A. Yes, sir.

"Q. For the year?

"A. Not for the year, sir.

"Q. For what time, for a group of pictures?

"A. For a group of pictures.

"Q. Going back before the consent decree which

685 was, as you know, entered in 1940, at that time the sale of the product was made for the ensuing exhibiting season, was it not?

"A. Correct, sir.

"Q. And what was the usual season in the film industry?

"A. September 1st to August 31 of the following year.

"Q. And the pictures at that time were offered and sold in groups, were they not, to theatres?

"A. At that time—

"Q. You did not sell individual pictures?

"A. We didn't sell the individual's product—we did not sell individual pictures other than those we actually knew were either in production or we had contemplated making.

"Q. Well, just tell us how you offered the pictures at that time?

"A. Well, I would have a brochure before me, outlining the plans for the coming season, showing the particular vehicles that we had bought, with the thought of making them, and in some instances some of them were partially cast, so we had a sufficient amount of information to establish the value of each given picture in the entire
686 forty or fifty pictures that we had to offer; and we would tell the buyer that a given picture may cost us a million or two million dollars, as the case may be, and for that reason, and because of the popularity of the book or the story or the stage play, and the popularity of the particular stars, that we felt we were entitled to so much money for that particular picture; when there was a meeting of the minds we made a deal."

"Q. Well, that group of which you speak would include all the pictures which your company either had or intended to release during that exhibiting season, isn't that correct?

"A. That is correct, sir.

"Q. You say that group usually was composed of forty to fifty pictures?

"A. No. Some seasons there were thirty-five, some seasons forty, some seasons fifty, some seasons, fifty-two. I cannot tell you exactly how many pictures we did have in any given season for the past fifteen years.

"Q. Well, they would range from thirty-five?

"A. From thirty-five to fifty pictures, or fifty-two pictures."

687 Mr. McConnell: Now, I would like to skip the grading of pictures here,—over to the top of 175.

Mr. Seeley: I would like to have you read that, because I think it hooks up with what you just read, about how he negotiates for pictures.

Mr. McConnell: All right. (Resuming reading:)

"Q. Now, did you make some classification of grading of those pictures?

"A. I just described that to you, how we establish a price.

"Q. I know, but do you designate in some way by letter, or symbol, or number; that is, Grade A, Grade B?

"A. Yes. Yes. There is an AA attraction, and there is a road show attraction, and there is an A attraction, and there is a B attraction, and a western picture.

"Q. And would your prices on the film differ?

"A. Fluctuate. It would fluctuate, based on the box office value.

"Q. Well now, on a new picture you would have no criterion of the box office value to go by?

"A. My experience tells me that.

688 "Q. Well, that is your valuation of the picture, isn't it?

"A. That is correct; and the buyer evidently agrees because he makes the buy.

"Q. Well, he might make the buy, and he might not, isn't that true?

"A. Well, I mean if he does it, now.

"Q. If he does, he accepts your graduation of the picture?

"A. That is right.

"Q. And pays your price for it?

"A. That is right.

"Q. Now, you have contracts, do you not, for instance, with Warner Bros., which would cover your stipulations with that Company, on deals that you negotiate for the years which are in question here, which are the years 1936 down to the date of the filing of this suit; you would have those contracts in your possession, wouldn't you?

"A. Oh, I would say so, yes, in the files.

"Q. And do those contracts stipulate all of the undertakings between you and the Warner Bros. with reference to the product which was being sold to them?

"A. Well, the contract itself is the actual result 689 of all our personal negotiations across the table, but the contract itself covers every one of the pictures sold, and at what price.

"Q. Well, there would be no further agreement beyond that contract, that would incorporate all of your agree-

them as a result of your negotiations back and forth across the table?

"A. Yes, sir.

"Q. Did you have what was called a master contract, with Warner Bros.?

"A. A master contract—you now again are referring to before the consent decree?

690 "Q. Yes, I am referring to before the consent decree.

"A. Well, a master contract would be developed in New York City, between the heads of our Company and the heads of Warner Bros, as I recall it, and my immediate superior would tell me the contents of it, or give me that as a guide to work from in conducting my affairs with their representative in Chicago.

"Q. In other words your negotiations would not go outside the scope of that master contract?

"A. Very seldom; unless I discussed it with my people and was able to work out something else, but it is dependent on the particular situation; but generally it was followed to the letter.

"Q. If you made any change in that, it would be beyond your province, and you would have to go back to New York to do that?

"A. That is right.

"Q. Now, is that also true with reference to Balaban & Katz?

"A. No, sir.

"Q. Before we go into Balaban & Katz, let us finish with Warner Bros.

"You say you would sell them their requirements of product, and I am now talking about before the consent decree?

691 "A. Yes.

"Q. You would sell their requirements of product?

"A. Yes.

"Q. Your group of pictures, for all their theatres?

"A. Yes.

"Q. Warner Bros. had no Loop theatres, have no Loop theatres at the present time, do they?

"A. No, they have not, today, but I just can not remember whether they had the Orpheum Theatres, before 1936 or since 1936, or not, but they did have a theatre called the Orpheum, on State Street.

"Q. Well, in these four groups that you have spoken of here, is there any particular order of negotiation as between the four groups, or would these negotiations go on at about the same time; that is, did you first negotiate with Warner Bros., and then B&K, was there any order of negotiation as between the four groups?

"A. Well, no, not in particular. It depended on who could see me first, or how my time was allotted.

"Q. Well, would the negotiations with one group be concluded before you would take up another one, or did you keep them all open until all the negotiations were completed?

"A. No. If we could close with Balaban & Katz, as an illustration, for the entire block of pictures, we
692 would close the deal, and then we would go to Warner Bros. Of course, we usually like to go to our most important customer first, then take them, try to take them in the sequence of importance.

"Q. Well, your first, most important group then would be Balaban & Katz, in the Chicago area, would it not, they are the biggest purchasers you have?

"A. Well, not necessarily, because we sell Warner's first run on the South Side. It is a toss-up between them. As a matter of fact, Balaban & Katz would usually buy from us a little bit later on, because they usually found time to take care of those companies that were selling in the Loop, and we have our own theatre in the Loop, so consequently, we were a little bit late getting our pictures first.

"Q. You do not sell Balaban & Katz on the south side?

"A. No. I am now talking about—when I say "south side" I am now talking about their Tivoli and their South town Theatres.

"Q. I understand. Then you think that Warner Bros. would be your most important customer here in the Chicago District?

"A. I would say it was a toss-up, either Balaban & Katz or Warner Bros.

"Q. How about Great States?

693 "A. Well, Great States were usually earlier buyers. Long before Balaban & Katz would buy, I would make my deal with Great States.

"Q. Great States have no theatres in the metropolitan area of Chicago, do they?

"A. No, sir.

"Q. So that the only three groups here that have to do with what we call the Chicago metropolitan area are Warner Bros., B. & K., and S. & S.?

"A. Correct, sir.

"Q. Do you make any distinction in negotiating your Loop runs from your subsequent runs, that is, between these three groups of theatres; for example, do you negotiate with Balaban & Katz for its Loop run before you negotiate for its subsequent run theatres?

"A. I don't do business with Balaban & Katz in the Loop. We have our own theatres.

"Q. You sell them no pictures at all?

"A. No. An occasional picture, in case there was a back-log that we had in our Palace Theatre, but it has only happened once to my recollection, that we sold a picture to the Chicago Theatre, in the period

694 "Q. All right. Then, as to Warner Bros. and Balaban & Katz, you sit down with them and negotiate the sale of pictures for all their theatres as a group, is that correct?

"A. Yes, sir."

The court: Suppose we take a recess until two o'clock.

(Whereupon the hearing of the above-entitled case was recessed to 2:00 P. M., of the same day, Monday, February 21, 1944.)

695 Florence B. Bigelow, et al.,
vs.
RKO Radio Pictures, Inc.,
et al.

Before IGOE, J., and J., Monday, February 21, 1944, 2:00 o'clock P. M.

The Court met pursuant to noon recess.
Present:
Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Seeley,
Mr. O'Brien.

The Court: All right, gentlemen, you may proceed.

Mr. McConnell: If the Court please, I think the jury should know that the reason Mr. Leo Salkin is not here is that the defendants have waived their cross-examination, and they knew that he was not going to be here this afternoon.

The Court: The jury will be so advised. The defendants have each stated they do not care to cross-examine Mr. Leo Salkin, that is the reason he is not here this afternoon.

696 (And thereupon counsel continued the reading of the deposition of Jack Charles Osserman, as follows:)

Mr. McConnell: At the top of page 180 is where we were.

"Q. All right. Then, as to Warner Bros. and Balaban & Katz, you sit down with them and negotiate the sale of pictures for all their theatres as a group, is that correct?

"A. Yes, sir.

"Q. Are those sales on percentage, or a stipulated price per picture?

"A. Do I have to go into the terms?"

I am leaving out the colloquy here of counsel.

Mr. Adcock: Mr. Seeley said: "Well, I think you have to answer that question, yes."

"The Witness: Well,—

"Mr. McConnell: We are talking now about before—

"The Witness: Strictly, prior to the consent decree, again?

"Q. Yes, before the consent decree.

"A. Well, before the consent decree it was all flat rental.

"Q. And by 'flat rental', what do you mean?

697 "A. A definite set price, a price agreed upon, a thousand dollars, five hundred dollars.

"Q. Well, is that per picture, or is that for a flat rental for all theatres, for all the product?

"A. Oh, no, no. We had—we would set a price, establish a price for each given theatre, and we would establish for the one theatre, confining it first and offering that first at one given theatre. We would wait. There would be ten pictures at a thousand dollars; there would be twelve pictures at seven hundred and fifty dollars, there would be five pictures at $500; and the balance for so much. Then we would go to the next theatre and we would handle each theatre individually, but we would not sell in bulk, if that is what you are talking about, by saying, 'we want $100,000 for all of our pictures for all of your theatres.' We have never made that type of a deal here.

"Q. The net result of that, or when you end up you have a contract which calls for so much money?

"A. You do, with anybody that you sell, that has more than one theatre.

"Q. Well, that may be true, but I mean in this case you end up with one contract calling for a certain amount of money for the year?

698 "A. Just a minute. I am hesitating because I am trying to visualize the contracts as they were written."

Mr. McConnell: Then I stated: "Well, probably this is not a fair line of examination, and I do not want to press you on it. The contracts do tell the whole story, and I do not think you can add anything to it. I am just trying to get it generally."

"The Witness: It would seem to me that we had—I know we had a contract for every theatre, with B. & K.

"Q. And the same is true for Warner Bros.?

"A. Yes, sir.

"Q. You say you did not have a master contract with Balaban & Katz?

"A. No, there was no master contract. There may have been a master contract on an individual picture that

you would sell, that you suddenly acquired throughout the season, after having made your full year's deal, and that master contract for the one picture would list each theatre and the price—I am sorry—the price designated against each theatre; and for a matter of convenience they would sign the one contract for the one picture.

699 "Q. Now, in your master contract which you referred to, with Warner Bros., would that set up the runs in the Warner Bros.' theatres?

"A. I am glad you brought that question up, because I think I was a little confused in the original question; when you said master contract. There never was a master contract made in New York; and I meant before, when I said that our people and Warner Bros. would get together in New York, would be for the purpose of outlining to their buyers and our salesmen in the field certain agreements, such as (1) a midnight show arrangement, as to what we should generally charge for a midnight show, the number of days—

"Q. What you should charge? You don't charge anything. You are talking about the buyer?

"A. No, no; what we should get from the buyer.

"Q. For your film?

"A. That is right; for a morning matinee, afternoon, special show, the number of days, on the important pictures, because while Chicago is a flat rental, other parts of the Warner Circuit nationwide are percentage, so consequently the number of days were of great importance, because on a percentage picture you try to get the greatest number of days possible, but as far as the con-

700 tract itself is concerned, those negotiations were held right here in Chicago, and we used that master agreement, not master contract, but waster agreement, for the purpose of guidance for these particular other things; but the actual negotiations for the purchase of the film was between Mr. Coston of Warner Bros. and his buyer and myself, locally, for the Chicago area. That is why I corrected that statement of master contract. It is not a master contract; it was a master agreement relative to these things, some of these things that I mentioned.

"Q. Well, I am still not clear. Was that a signed document that you are referring to?

"A. Yes, it was signed, as I recall it, once by Joe Bernhardt for Warner Bros., and Jules Levy of our com-

pany, Depinet of our Company. Jules Levy at that time was our General Sales Manager.

"Q. So that what it would provide would appear from the terms of the document itself, there is nothing that is not in the terms as set out in the signed agreement, is that correct?

"A. Well, the agreement—will you repeat that question?"

701 Mr. McConnell: And the question was read.

"A. No. That is correct.

"Mr. McConnell: Q. Then in your own negotiations with Mr. Coston for Warner Bros., you would determine the run and the clearance provisions for the different theatres as a general part of your negotiations, is that correct?

"A. That is correct, sir.

"Q. And those would appear in the written contracts themselves?

"A. Oh, occasionally on a clearance sheet, for a matter of convenience, showing the clearance of each theatre; and of course clearance was a part of the negotiations.

"Q. And the clearance sheet would be incorporated in the contract itself?

"A. It becomes part of the contract.

"Q. Are you familiar with the term 'protection letter'?

"A. Well, that is clearance.

"Q. Is that what you call a protection letter?

"A. I don't—I never referred to it as 'protection'. I have always referred to it as clearance.

"Q. Well, is there any difference between those
702 terms, clearance period and protection?

"A. That is referred to as protection, but I always referred to it as clearance.

"Q. Well, did you receive, prior to these negotiations, from Warner Bros., any request for, to use your term, clearance, for their different theatres?

"A. Not that I know of. I can't remember, from Warner Bros.

"Q. Did they make a demand on you for clearance, then, in the negotiations?

"A. Oh, definitely, in the negotiations. Clearance is a privilege, and that is what they pay for. In other words, to establish the price of a picture one cannot be without the other. I mean the Avalon Theatre is first run, my first run account on the South side, and as such, in order for

them to be able to pay me a price that makes them my best customer down there, they have to have a certain amount of clearance because of the admission price they charge and because of the importance of the picture, and because it is necessary for me to get that amount of money out of the picture, the only way I feel they can pay me that is by granting certain clearance; but clearance is definitely
703 a part of your negotiations with the exhibitor.

Q. Well, that request for clearance, for that particular clearance, any clearance would come from Warner Bros. in the same form?

"A. Yes.

"Q. Now, I am trying to get at the form.

"A. The form is a number of sheets. Again I say for convenience sake; they could just as well be put in your contract for each individual theatre, but they simply—when you write up all your contracts, we used to write one for each theatre, and they would be that high (indicating), so they would type up, or we would type up the agreed upon clearance for each of their theatres, and we would sign that clearance letter, and they would sign that clearance letter, for that particular season's product.

"Q. Well, now, what are the different runs for a Warner Bros. exhibiting theatre here?

"A. Well, the Avalon Theatre plays in either the first, the second, or the third week of A.

"Q. Do they have any other A week theatres?

"A. And their Capitol Theatre plays in second, third of—second or third week of A, or if they are late in booking, they may play a picture in B week, in the first B week.

704 "Q. All right. Is that all of their A theatres?

"A. That comprises their 55 cent theatres, the two theatres.

"Q. When you described them as 55 cent theatres, is that the stipulated admission price you are referring to?

"A. Not necessarily. It is their first run, and naturally we know 55 cents is the generally accepted admission price for those big de luxe theatres that run in A week.

"Q. Well, that is stipulated in your contract, is it not?

"A. Oh, yes, definitely.

"Q. That they shall run 55 cents?

"A. Yes, definitely.

"Q. Now, their B theatres, what are their B theatres?

"A. Their B theatres are forty cents, and they are—that is the Stratford Theatre, Stratford Theatre is run in B week of release, and charges the necessary admission price for that week.

"Q. That forty cents you are refecring to, that is evening admission?

"A. In the evening, 40 cents in the evening, although sometimes they charge 55, with vaudeville and a pic-
705 ture, on the week-end.

"Q. All right. What other B theatres do they have?

"A. That is all the B theatres they have, just one.

"Q. What is the system—I won't call it system, because there has been objection to that term, but what are the weeks of release that you are talking about here? Will you describe those, starting with the conclusion of a Loop run?"

Mr. McConnell: Can we skip that?

Mr. Seeley: Yes. I think that is clear to the jury by now.

Mr. McConnell: And the west side system of release, on page 190, can we skip that?

Mr. Seeley: Yes.

Mr. McConnell: That runs over to page 192.

Mr. Seeley: All right.

Mr. McConnell: At the top of page 192:

"Q. I take it you did not negotiate subsequent runs of the independents, so-called independent theatres, the individual theatres?

"A. No; only in an advisory capacity with the men.

"Q. That would be whom?

"A. Sam Gorelick.

706 "Q. Mr. Gorelick?

"A. Mr. Gorelick, that is correct, sir.

"Q. Now, you say you never sold any Loop runs to B. & K.?

"A. With very few exceptions, as I told you, the only picture I remember, which was 'Bringing Up Baby' at the Chicago Theatre, and an occasional move over from the Palace, like 'Human Bondage', I remember that.

"Q. You sold your first Loop release to your own Theatre?

"A. The Palace Theatre.

"Q. And the Palace Theatre and the Grand Theatre are—

"A. (Interrupting) The Grand was not in existence

at that time as a motion picture theatre. The Palace Theatre was running our pictures.

"Q. The Grand Theatre now is in existence?

"A. Today, yes, sir.

"Q. Is that managed or operated by your Company, or some subsidiary of your Company?

"A. I can not seem to get it. All I know is that our Company, that our District Manager for the Theatre Department is operating the theatre, and we are instructed to deliver pictures to the Theatre, but I don't know
707 the details.

"Q. Well, you said a minute ago that in your negotiating for the run for the theatres, in order to get your price for the picture you had to grant them certain privileges, I think that was the word you used, in the run of the picture, as to clearance; is there some advantage to the Theatre in the earlier run of a picture that would make it able to pay you more money for the picture?

"A. Oh, definitely, definitely.

"Q. What is that advantage?

"A. Well, the picture has not been shown to as many people, and the exhibitor charges a certain admission price, and he would not want a theatre running at a lesser admission price to run with him, or a theatre even charging the same admission price to run with him if he could buy the necessary clearance so that he would have a capacity house on that picture, thereby enabling him to give me that much more money on my picture. It is a definite advantage.

"Q. In other words, the picture would have more box office appeal—

"A. Yes.

"Q. —on a prior run than it would on a subse-
708 quent run?

"A. Yes. That is why we grant three weeks clearance on an expensive Loop run before we allow the picture to go elsewhere, and relatively it has the same amount of value as it gets down to the saturation point.

"Q. During the period of the 1936—the buying season for 1936 would be in September some time, you say. From that period down to the beginning of this suit, did you have any long term license contracts in effect with either Balaban & Katz or Warner Bros.

"A. Franchise, no.

"Q. Do you keep these so-called clearance sheets or

letters, or whatever you want to designate them, which you have described here as the clearance of the different theatres, did you keep those in your files from year to year?

"A. Usually they are kept with the contracts, or in these instances I imagine O'Brien has a clearance file. Frankly, I could not answer it correctly because when I complete my negotiations I leave the details, after explaining it to my boys, I leave the details for them to work out; just get the contract drawn up; they know what I agreed to, and carry on from that point."

709 Mr. McConnell: Do you want to go into this "Citizen Kane" picture?

Mr. Seeley: Just a minute. Let us skip that.

Mr. McConnell: Page 196.

Mr. Seeley: All right.

Mr. McConnell: At the bottom of page 196:

"Q. Do you play on percentage with your own theatres? I mean, do you sell, not play; do you sell on percentage?

"A. That deal is negotiated in New York, and I am not familiar with its terms because not only is the deal negotiated in New York, but payment made to our distributing Company from our Theatre Department in New York, and we get what is known as a home office collection letter, frequently telling us what to take credit for, and occasionally these home office collection letters state 35 per cent, 25 per cent, or whatever the terms are; but we do not negotiate those deals.

"Q. The Grand Theatre is playing in what week of release now?

"A. First run.

"Q. How long has it played first run?

710 "A. About six months, five months, thereabouts.

"Q. And where was it played prior to that time?

"A. Well, it originally was a legitimate theatre, and then was converted into a picture theatre, running old pictures, re-issued pictures, and occasionally a scare show or action picture of a sensational type, first run.

"Q. It is a rather old theatre, is it not?

"A. Yes, it is. It is an old legitimate theatre, converted.

"Q. How about the Palace Theatre; is that playing first run Loop?

"A. Yes.

"Q. How long has that played first run?

"A. Ever since I have been in Chicago.

"Q. How long has your Company owned it?

"A. I don't know. I know it was here when I came here."

Mr. McConnell: That is all I care to read of my examination. I skip to your cross, if you wish to have me read it, if it is all right with you.

Mr. Seeley: Just a minute, and I will look through the rest of this.

All right.

Mr. McConnell: (Reading:)

711 "*Cross-Examination by Mr. Adcock.*

"Q. You are leaving the city, aren't you?

"A. Yes, sir.

"Q. And you have an arrangement with your Company with reference to that, have you?

"A. Yes, sir.

"Q. And where are you going?

"A. Rio de Janeiro.

"Q. And what are to be your duties down there?

"A. I am not in a position to state, at the moment, General Supervisor, but it is—I am going down there representing my Company.

"Q. Yes. And you are leaving in a week or so, is that correct?

"A. Yes, sir; the week after this Saturday.

"Q. You spoke of a master-contract, and you stated in general language, I believe, generally, what the terms of that master contract were?

"In negotiating, in making your contracts for the sale of film, are you guided, here in Chicago, the different theaters, are you guided by that master contract?

712 "A. Why, no. The master contract,—there is no master contract: I amended that and said a master agreement.

"Q. I see.

"A. And the master agreement only has to do with Warner Bros. and nobody else, in the City of Chicago.

"Q. Oh, yes. Well, is that master contract made each year, or agreement, as you call it?

"A. Yes, sir. There may be a few changes, depending

on the times, but as I recall it, there was a master agreement each year. Sometimes there would not be, because the one for the following year could apply to the preceding year."

Mr. McConnell: That is all I care to read of that. I don't care about the O'Brien deposition.

Mr. O'Brien: What deposition, Mac, did you say?

Mr. Seeley: The O'Brien deposition.

Mr. O'Brien: You are not talking about me?

Mr. McConnell: Raymond A. O'Brien, who was clerk with RKO.

Mr. Seeley: How about the cross-examination of Mr. Osserman, when he came back another day to complete it?

Mr. McConnell: I have no objection to it.

Mr. Seeley: There are objections to it. I suppose we will have to argue your objections.

713 Mr. McConnell: I think that should go in on your case, offered on your case.

Mr. Seeley: Well, it was intended by me as cross-examination at the time it was made. I see it is written up there without specifying cross-examination.

Mr. McConnell: Well, I wouldn't want to read that without the Court's ruling.

Mr. Seeley: I thought I would let the Court read it (handing document to the Court).

The Court: What was this, cross-examination?

Mr. Seeley: So intended at the time it was made.

Mr. McConnell: I understood it was taken in order to —because the witness was going to Buenos Aires, to be used on the defendants' case at the trial, and was so offered at the time.

The Court: This appears to be direct examination.

Mr. Seeley: Well, I see that that is the way it was written up. As I say, it was intended to be cross-examination by me at the time I made the examination.

Mr. McConnell: The witness was brought back specifically, as I recall, if the Court please, on the statement that he was going to Buenos Aires, and wanted that deposition taken so it could be read on their case at the trial.

714 The Court: Well, I think it ought to be withheld until that time is reached, if it is reached.

Mr. Seeley: We can clarify the record after a while, I

suppose, on what this is. There is no use taking up the time of the jury in the box.

The Court: Very well.

715 Mr. McConnell: I want to turn now to the deposition of James Coston.

(Thereupon the deposition of JAMES E. COSTON, was read to the jury as follows:)

"Direct Examination by Mr. McConnell.

"Q. Will you state your name, please?

"A. James E. Coston.

"Q. And where do you live, Mr. Coston?

"A. 4950 Chicago Beach Drive.

"Q. And what is your business or occupation?"

Mr. O'Brien: Now, may I note an objection on the part of Warner Bros. pictures and Vitagraph. Mr. Coston is not even agent of those companies, but Warner Bros. circuit management, no question about that.

The Court: What do you say about that? He doesn't come within the rule. That is what his objection is.

Mr. McConnell: That he is not managing agent, is that it?

Mr. O'Brien: He had no connection with Vitagraph or Warner Bros. pictures.

716 The Court: You mean he is not managing agent of either one of those companies?

Mr. O'Brien: That's right.

Mr. McConnell: Well, he tells us what he is, here. He is zone manager for Warner Bros.

The Court: That only applies to Warner Bros., so far as his testimony is concerned?

Mr. O'Brien: Warner Bros. circuit management.

The Court: Yes.

Mr. O'Brien: That's right.

Mr. McConnell: Well, that is one of the defendants in the case.

Mr. O'Brien: That's right.

The Court: All right.

Mr. McConnell: (Resumes reading)

"Q. Will you state your name, please?

"A. James E. Coston.
"Q. And where do you live, Mr. Coston?
"A. 4950 Chicago Beach Drive.
"Q. And what is your business or occupation?
"A. Theatre operator, Zone Manager for Warner Bros.
"Q. And how long have you been so engaged?
"A. Thirteen years.
"Q. What is your business address, your office?
717 "A. 1307 South Wabash Avenue.
"Q. Chicago?
"A. Chicago, yes.
"Q. How long have you been Zone Manager for Warner Bros.?
"A. Since September, 1930.
"Q. How long have you been employed in any capacity by Warner Bros.?
"A. The same time.
"Q. The same time?
"A. Yes."
Mr. McConnell: Do you want that colloquy in here?
Mr. O'Brien: Yes.
Mr. McConnell: (Reading)
"Mr. O'Brien: There are three Warner Bros. Will you please make that a little more specific?
"Mr. McConnell: Well, I will get at it in a little different way.
"Mr. O'Brien: All right.
"Mr. McConnell: Q. Prior to September, 1930, by whom were you employed?
"A. I was in business for myself.
"Q. In the same business?
"A. Yes, sir; owned theatres, operating theatres,
718 for the Chicago Theatres Corporation, of which I was President; and I also had the Coston Booking Office which booked pictures for theatres.
"Q. You were what is called a circuit booker, is that it?
"A. Well, not exactly a booker.
"Q. You booked pictures?
"A. We had an office, and the office would buy and book pictures.
"Q. How long were you so engaged?
"A. Possibly about eight years prior to that.

"Q. Eight years prior to what?

"A. 1930; from 1922 until 1930.

"Q. And prior to 1922 in what business were you engaged?

"A. Operated theatres.

"Q. With what company?

"A. I was in partnership with Fecher & Nortman, operating the Harvard, the Lexington, the Kimbark, and the Drexel.

"Q. Where are those theatres located?

"A. All on 63rd Street.

"Q. How long were you so engaged as a theatre operator?

719 "A. All told in theatre operations?

"Q. Yes.

"A. Since 1909.

"Q. Going back to the beginning of your theatre career, do you remember when the Jackson Park Theatre was built?

"A. Yes, sir.

"Q. In what year was that built, do you remember?

"A. About '16 or '17, I don't exactly remember. I think it was the fall of 1916 or early in 1917; about 1917.

"Q. You say you were there the opening night of the Jackson Park Theatre?

"A. The opening day, or night, yes.

"Q. What other theatres were there in that immediate district at the time of the opening of the Jackson Park Theatre?

"A. There was a theatre south of the Jackson Park Theatre, a thing they called—I am tring to thing of the name—it has been non-existent now for some time—about a block south; and there was a theatre on 63rd Street, four block north of the Jackson Park Theatre.

"Q. Is that the Imperial that was four blocks north?

720 "A. Well, the Imperial was approximately seven blocks—no, no, four blocks, and three blocks west. The Kimbark was approximately eight or nine blocks, from 63rd and Kimbark to 67th and Stony Island, where the Jackson Park is located; and the Lexington was—the Drexel was on 63rd and Drexel, and the DeLuxe Theatre at 63rd and Cottage, and the Langley Theatre at 63rd and Langley. I was talking about around the immediate vi-

cinity. There was a theatre on 75th Street, east of Stony Island. I can not recall the name now, a smaller theatre; and there was a theatre on 75th Street and the Illinois Central tracks and off South Shore.

"Q. Do you remember the name of that theatre?

"A. I think it was the Park Manor, if I remember correct, the Park Manor. I am not sure, because they changed the name in the last thirty years, you know, and I can not remember. I know the owner of the theatre, or the operator. Mr. Krug operated it.

"Q. What name did they change it to?

"A. They changed it two or three times. I don't know what the name is. Do you know what it is, on 75th?

721 The one that Gollos is operating now?

"Mr. Shumow: The Ray.

"The Witness: The Ray Theatre.

"Mr. McConnell: Q. Was the Tivoli Theatre in existence at that time?

"A. No.

"Q. Was the Tower Theatre in existence at that time?

"A. No, sir.

"Q. Was the Maryland Theatre then in existence?

"A. No, sir. The Maryland came after the Jackson Park Theatre.

"Q. Was the Jeffery Theatre in existence then?

"A. No, sir.

"Q. Was the Avalon Theatre in existence then?

"A. No

"Q. Was the Shore Theatre in existence then?

"A. No.

"Q. Was the Grove Theatre in existence then?

"A. No.

"Q. How about the Hamilton Theatre, was that in existence?

"A. Yes, the Hamilton Theatre was open.

"Q. Is that one of the theatres that you operated, 722 the Hamilton?

"A. At that time?

"Q. Yes.

"A. No. Mr. Schwartz operated that theatre at that time."

Mr. McConnell: Now, skip the answer there. (Reading.)

"The Witness: Schwartz, Jacob Schwartz.

"Mr. McConnell: Q. You are speaking of the time in 1917, at the opening of the—

"A. Approximately '16 or '17, I don't know exactly, but between '17 and '17.

"Q. At the time of the opening of the—

"A. Jackson Park.

"Q. (Continuing)—Jackson Park Theatre?

"A. Jackson Park Theatre. That was your question, wasn't it?

"Mr. McConnell: That is right.

"Q. At that time, Mr. Coston, were there weeks of release for these various theatres in that district?

"A. Yes, there were weeks of release; rather it was the availability of pictures, but the pictures were different then than they are today.

723 "Q. Well, in what way?

"A. Well, in those days you had to take single and two-reelers and three-reel pictures.

"Q. There was a difference in the length?

"A. A differences in the length, but also it was so entirely different. In those days each theatre was buying a week's service, in the early days, from 1909, to about '16 or '17. Now, you buy pictures. In 1912 or '14, along those years, we used to pay so much per week for the service from the Company, either the General Film or Mutual, and so forth, pay so much to supply you with so many pictures a week. It was changed every day or changed every other day, whatever were available.

"Q. You are familiar with the present method of releasing film?

"A. Yes, sir.

"Q. In the Chicago District?

"A. Yes."

Mr. McConnell: Let us skip that.

Mr. Seeley: All right.

Mr. McConnell: Now, over to page 221, the top of the page, the first question.

Mr. Seeley: All right.

Mr. McConnell: (Reading.)

724 "Q. All right. Now, what was the method of releasing pictures which was in existence in 1917?

"A. I explained it to you. '17?

"Q. Yes; in 1917. I am taking you away back now to the Jackson Park Theatre.

"A. In 1917, the theatres played pictures first down town; then certain theatres, outlying, again, played the first run.

"Q. Well, was there any difference between that system or method, or whatever you want to call it, of releasing pictures, than the present system?

"A. There is some change, yes. There have been some changes, with the progress of the industry, and the erection of larger theatres.

"Q. I want to know what those changes were.

"A. I don't quite understand just what the question is.

"Q. What changes were made in the system or the method of releasing pictures, between 1917—"

Mr. McConnell: I withdrew that. (Reading.)

"Q. What differences were there between the method of releasing pictures in 1917 and the present date, what was the specific difference?

"A. Well, fundamentally the same system, the same system that existed then as today, the large outlying
725 theatres having the first call for the pictures, charging higher admission prices, they are able to pay high film rentals.

"Q. Well, were pictures released in the successive weeks of release which you have enumerated, as the present system?

"A. Well, in those days there were not as many theatres as we have today, there were fewer theatres; in 1917 there were fewer theatres than there are today.

"Q. But they did release pictures in successive weeks of release, just the same?

"A. They did—if a theatre had, in those days they called it protection; if the Drexel Theatre, or the Lexington Theatre, for instance, had protection over the Kimbark, before we were put out of the Kimbark, the Kimbark had to repeat pictures after me; likewise some other theatres in the neighborhood had to follow the other. We had protection, clearance, and we paid for this clearance, and we played the picture first, and the others had to follow after we got through with the pictures, after the termination of our run, and it varied, the following week, and in some cases fourteen days.

726 "Q. You still called it protection or clearance?

"A. No. We called it clearance.

"Q. All right. Do you know in what week of release the Jackson Park played pictures in 1917?

"A. Played the same time as our Lexington Theatre played, on 63rd Street.

"Q. And what was that time?

"A. Well, approximately the first week—the first week in the neighborhood, the first week that was available, day and date. There were other theatres on the South Side that possibly played pictures before we did, but when the pictures became available, they became available at the same time to the Lexington Theatre, 63rd and University.

"Q. How many weeks would that be after the conclusion of the Loop run of the picture?

"A. It varied in those days for pictures, and depended entirely on the picture; sometimes three weeks, sometimes four, sometimes one week.

"Q. After the conclusion of the Loop run?

"A. After the conclusion. In 1917 the largest theatre was on Madison Street, charging only 25 or 30 cents; and the difference in the admission price between down-
727 town theatres and the outlying houses was very small, possibly a nickel, five or ten cents.

"Q. All right. Now, these other theatres that were playing in 1917, you have mentioned the Imperial, the Kimbark, the Drexel, and the De Luxe—

"The Witness: (Interrupting.) The Imperial was—

"Mr. McConnell: Q. (Continuing.) How would they play?

"A. Pardon me. What was that?

"Q. What weeks would they play?

"A. The Imperial repeated after the Lexington, or Jackson Park, and the Kimbark in 1917 repeated the pictures after the Lexington.

"Q. Day and date?"

Mr. O'Brien: You omitted something.

"The Jackson Park and the Lexington played the same week."

Mr. McConnell: (Reading.)

"Q. Day and date?

"A. Yes, day and date. Call it that.

"Q. Do you remember when the Shore Theatre was built?

"A. It was built by Mr. Bloom, operated by Mr. Bloom.

either—I think either in '26 or '27, 1926 or 1927. I
728 can't remember. I don't know. It was approximately that. Well, maybe it was earlier than that, but I am trying to think—about '26 or '27, I would say.

"Q. Do you know—

"The Witness: Sir?

"Mr. McConnell: Q. Do you know what position it played with reference to the Jackson Park Theatre?

"A. Played day and date with the Jackson Park Theatre.

"Q. Day and date?

"A. Yes.

"Q. Are you sure of that? You are sure it did not play a week behind the Jackson Park?

"A. Well, at that time possibly the Jackson Park—the Shore might have played some pictures behind, but most of them were played day and date.

"Q. The Maryland Theatre, when did that come into existence? The old theatre used to be the Woodlawn Theatre, as I understand it.

"A. Yes, sir.

"Q. When was the Woodlawn Theatre built?

"A. 1918 or '19, '18 or '19, I don't remember the
729 exact date. I will have to—

"Q. A year after the Jackson Park?

"A. Sir?

"Q. A year after the Jackson Park?

"A. Possibly a year, a year and a half or two after the Jackson Park.

"Q. All right. Now, after the Woodlawn Theatre opened, where did it play with reference to the Jackson Park?

"A. It played ahead of the Jackson Park. Jackson Park repeated after the Woodlawn Theatre.

"Q. And how much ahead did it play?

"A. A week, sometimes two weeks. It depends on the length of the run of the picture in the Woodlawn Theatre, because some pictures played a week; therefore they had a longer protection. In those days they called it protection or clearance. The clearance in those years was governed mostly on the run of the picture in each theatre.

"Q. For each individual picture, you mean?

"A. Well, there wasn't any individual pictures then, in those days, because we bought a group of pictures.

"Q. Bought a group of pictures for the whole
730 year?

"A. That is right. The sales policy of film companies those days and now is different.

"Q. That Woodlawn Theatre later became the Maryland?

"A. Yes.

"Q. Do you know when that happened, when the name was changed?

"A. '28, 1928 or '29. I believe it was '28. It was not changed, but the theatre was closed for approximately six months or a year, on account of remodeling, was closed."

Mr. McConnell: Mr. O'Brien interjected: "Did you say remodeled?" (Reading.)

"A. Remodeled afterwards, Mr. O'Brien. The theatre was closed for a period. It was close to a year, if not longer. I don't remember the exact time.

"Mr. McConnell: Q. Was the theatre purchased by a new interest when it was reopened?

"A. Yes. The building was sold, and the theatre was closed.

"Q. Who bought it at that time do you remember?

"A. I don't know. Some group of people bought the building, I know that, because I was interested. A
731 group of people, which later, later on leased; leased it to Balaban & Katz.

"Q. Now, when was the Tivoli Theatre opened?

"A. 1922.

"Q. Do you know who built that theatre?

"A. Balaban & Katz.

"Q. And what was the playing position after it opened, with reference to the Jackson Park Theatre?

"A. First run on the South side.

"Q. Well, now, I know what that means, but for the record tell us what that meant in weeks ahead of the Jackson Park. Now, first run, how many weeks would they play ahead of the Jackson Park Theatre?"

Mr. McConnell: Mr. Adcock interjected: "You mean at that time?" And I said: "At that time, yes."

"A. Possibly two weeks, some three weeks.

"Q. Well, when was the Tower Theatre opened?

"A. I don't recall whether it was '23: '23, I believe. A year or so later. A year later.

"Q. Do you know who built that theatre?

"A. I remember who opened it. I don't know who owned the building. Lubliner & Trinz operated the theatre.

"Q. And what playing position did that theatre 732 have?

"A. A similar position as the Tivoli Theatre, first.

"Q. Did it play day and date with the Tivoli?

"A. No, sir. It played different pictures, but the same first run, South side. Each theatre played different pictures. They did not play the same pictures in both theatres.

"Q. That would be, you say, one or two weeks ahead of the Jackson Park, that first run?

"A. Yes, sir.

"Q. Now, when did the Stratford Theatre open?

"A. 1925, I believe; '24 or '25. I am just trying to think. After all, there are so many theatres.

"Q. Do you know who built that theatre?

"A. I know who opened the theatre, operated it. I don't know who built it. I didn't know the owners of the building. A fellow by the name of Goldberg operated the theatre. Then later it was sold to Newell & Wrechen. Newell & Wrechen owned the Howard Theatre at Evanston; and Newell & Wrechen sold it to National Play Houses. I think it was in '27 or '28."

733 Mr. McConnell: Go on from there.

"You asked about the opening of the Jeffery. It might be possibly—yes, '24 or '25, I don't know. Either 1924—I don't know. It was a year later, after the Tower, some time after the Tower, I don't know. I wasn't in business for a year at that time. I can not recollect. I was in the hospital a whole year, and I can not remember all this.

"Mr. McConnell: Q. Now, where did the Jeffery Theatre play pictures—

"A. Jeffery Theatre—

"Q. (Continuing:) —with reference to the Jackson Park?

"A. (Continuing:) —played ahead of the Jackson Park.

"Q. What run would you call it, first run?

"A. No, sir.

"Q. How many weeks ahead of the Jackson Park did it play?

"A. A week.
"Q. One week?
"A. Yes.
"Q. Are you sure the Jackson Park did not play ahead of the Jeffery Theatre?
"A. At the opening of the Jeffery?
"Q. Yes.
734 "A. I don't remember, sir, if it opened during the year of 1924, I don't remember, because I was not active in business; as I stated before a year before that I was in the hospital, ill. But I do know in 1926 and '27 the Jeffery Theatre played pictures ahead of the Jackson Park, because I booked and bought pictures for both theatres, the Jackson Park and the Jeffery.
"Q. How much ahead?
"A. Week earlier.
"Q. The same pictures a week earlier, or different pictures?
"A. The same pictures, sometimes that the other plays, same pictures. The Jeffery played a less number of pictures than the Jackson Park, therefore there have been pictures which the Jeffery did not play, and the Jackson Park cleared the neighborhood. The Jackson Park was making three changes a week, and the Jeffery was making two changes a week. Therefore, they were using a less number of pictures.
"Q. The Jeffery was using a less number of pictures?
"A. Yes.
"Q. So that the Jackson Park did play some pictures which had not been played by the Jeffery?
735 "A. That is right, yes, sir.
"Q. Now, when did the Avalon Theatre open?
"A 1927.
"Q. Who opened that theatre, do you know?
"A. National Theatres, National Play Houses.
"Q. And where did the Avalon play with reference to the Jackson Park?
"A. Oh, it played about three weeks prior to the Jackson Park; sometimes four; sometimes five.
"Q. Is that the time it opened, in 1917?
"A. 1927.
"Q. 1927?
"A. Yes, sir.
"Q. Was that what you call a first run theatre?

"A. Yes, sir; played first run.

"Q. Did it play day and date with the Tivoli?

"A. No, sir.

"Q. How did it play?

"A. Played different pictures.

"Q. They did not compete at all with pictures, those two theatres?

"A. No, sir. Each theatre had its own pictures. If you want me to give you a little better illustration, I would say Warner Bros. and Fox and Universal Pictures played at the Avalon first run, and Paramount, Metro-Gold-
736 wyn-Mayer and First National Pictures was separate. Warner Bros., First National and different companies played first at the Tivoli, and the Avalon had its own pictures, first run on the south side, which played both the Capitol and the Avalon, and the Tivoli had its own pictures which played first run on the south side.

"Q. As a matter of fact, Jackson Park played pictures right after the Avalon, didn't it; no intervening run between the Avalon and Jackson Park?

"A. The Jeffery.

"Q. You have already told us the Jeffery played—

"The Witness? (Interrupting:) The Jeffery repeated after the Tivoli.

"Q. Well, the picture—

"The Witness: (Continuing:) After the Avalon.

"Mr. McConnell: Q. And the pictures were back to the Jackson Park?

"A. Sir?

"Q. Didn't you say that the Jeffery—

"A. No, sir.

"Q. (Continuing:) —played some pictures a week ahead?

"A. No, no. The Jeffery played—in 1927 the Jef-
737 fery played ahead of the Jackson Park Theatre except those pictures which the Jeffery did not play, Jackson Park was clear; but any pictures the Jeffery was playing, and the Jackson Park had elected to book and play those pictures, they had to play after the Jeffery Theatre.

"Q. There were some pictures, then, which the Jackson Park could play right after the Avalon had finished with the picture?

"A. No, because the Avalon Theatre—the Jeffery Theatre played after the Avalon.

"Q. Yes, but they did not use all the pictures, you say.

"A. The Jeffery used more than the Avalon. The Avalon used one picture a week, and the Jeffery used two, and sometimes three. Therefore, any pictures bought for the Avalon were bought for the Jeffery, too. It was owned by the same company. Both those theatres were owned and operated, in 1927 and '28, by the same company, National Play Houses.

"Q. Then there was only one intervening run between the Avalon and the Jackson Park at that time; and that was the Jeffery?"

Mr. McConnell: Mr. Adcock says: "You mean in 738 1927?" And I said: "Yes."

"A. Yes.

"Q. When was the Grove Theatre opened?

"A. '25, 1925, I think; 1925.

"Q. And who opened that theatre, if you know?

"A. Lubliner & Trinz.

"Q. And what was its playing position with reference to Jackson Park?

"A. Playing pictures ahead of the Jackson Park.

"Q. How far ahead?

"A. A week earlier.

"Q. When was the Hamilton Theatre opened?

"A. The Hamilton? 1915, I believe, or '16; either '15 or '16; I don't remember now, the exact year, but I know it was open in 1916, possibly earlier, I don't remember that.

"Q. Where did that theatre play with reference to the Jackson Park?

"A. Now, what years, what periods, Mr. McConnell?

"Q. When it opened, or when the Jackson Park opened; the Jackson Park opened in 1917, you say, and the Hamilton was opened in 1915?

"A. The Hamilton, to my knowledge, always repeated after the Jackson Park, played the pictures after the 739 Jackson Park.

"Q. Now, you say, you acted as a booker for the Jackson Park Theatre?

"A. Yes, for a period.

"Q. During what period of time?

"A. Well, I don't remember. I think it was in 19—1924 and 1925, possibly '26. Now, just looking back on that—'25 or '26. I have to look at my records.

"Q. And who owned the Jackson Park at that time?

"A. Mr. Bloom, Edward Bloom.

"Q. Edward I. Bloom?

"A. Yes, sir.

"Q. And who was manager of the theatre at that time? Was it Leo Salkin?

"A. No, sir. Leo Salkin, no. Leo Salkin, that year, was with the Marx Bros., in those years, 1925, '6 and '7. If I remember, it was Dave Rice. Dave Rice was manager there for a period.

"Q. Did you ever book any pictures while Leo Salkin was there, at the Jackson Park Theatre?

"A. I don't remember. You say did I? Well, we had my office. Of course, the office handled it. We were
740 handling 60 some theatres.

"Q. I am talking about what you know of your own knowledge.

"A. Of my own knowledge I don't remember now, that time, Leo Salkin.

"Q. Now, when was the present system or method of producing pictures set up here in the Chicago District, as distinguished from the one we have been talking about?

"The Witness: There was no system adopted. As the business progressed, as more theatres were opened, after 1930 or '31, when the theatres, the larger theatres, had stage shows, they abandoned their stage shows and went to a straight picture policy, and placed pictures, and still charged fifty cents, as they were doing it.

"Then each theatre—for instance, the Tivoli played pictures first run on the south side, those pictures which they contracted for; then the Avalon and the Capitol had pictures first run on the south side, for those pictures which they contracted for, in certain cases which I explained a little earlier, and after that, why, the larger theatres such as the Stratford, the Tower, and the
741 Piccadilly, which are also large theatres, played the pictures after the larger theatres got through playing them, a week or two later, and after those theatres, again, the so-called B houses, and we call them B houses, to really classify them as to what weeks they played; then the C houses, such as the Highland Theatre on the south

side, or the Maryland, and the Grove, and the Jeffery, and the Ogden played, and after those theatres played in that week, then the first week houses such as the Jackson Park and other theatres, the Lexington and other theatres, that played and charged large admission prices.

"Q. Now, my question is: When did you first start designating them as A, B, C and first week houses?

"A. Nobody designated them. When sound came really in full existence to the theatres, in 1927 to 1929,—see, it was a period for approximately a year and a half or two when equipment for sound, sound equipment became available to the theatres, all theatres did not buy their equipment at one time—the companies who made sound or talking pictures at that time asked for a bigger rental for them, larger percentage rentals, and in order for the exhibitors to pay their rentals, of course, they had to charge higher admission prices, and they were
742 granting various exhibitors clearance over their competitor theatres.

"Q. When was that, the sound picture that you are talking about? That is what I am trying to get at.

"A. It took to get?

"Q. Yes.

"A. It took us a period of about two years, Mr. McConnell.

"Q. What two years?

"A. Well, say from 1927 until 1929.

"Mr. McConnell: That is close enough.

"The Witness: See, the equipment was not available to all theatres, and we only really had one company those days, the Western Electric, and you had to give your order and wait about, sometimes six months and sometimes eight months. Some theatres those days, they acquired so-called bootlegger equipment, cheaper equipment, which did not prove satisfactory. I mean sound equipment."

Mr. McConnell: I am skipping the colloquy. The next question is over at the top of page 240.

743 "Q. Warner Bros. Inc.—Warner Bros. Pictures, Inc., was the first large company in the field with a sound picture, wasn't it?

"A. They were the first ones to adopt the sound, yes, develop sound, that is right.

"Q. Now, what again is the specific name of the company you are now with, the corporate name?

"A. Well, I am an employee of Warner Bros. Circuit Management Corporation.

"Q. And what is the business of that corporation?

"A. To operate theatres. Oh, Warn—to operate theatres, properties.

"Q. Does that company own the theatres that it operates?

"A. No, sir. It is an operating company.

"Q. An operating company only?

"A. Yes.

"Q. You would call yourself an exhibitor, would you not, of motion pictures; you do not sell the pictures?

"A. No, I do not. An exhibitor, that is right. My activities are thoroughly, they are thoroughly devoted to exhibiting the pictures, supervising theatres.

"Q. Now, who owns the theatres which you operate, what company?

"A. Well, there are various companies, Mr. Mc
744 Connell.

"Q. Well, what companies here in the Chicago District?

"A. Well, we have subsidiaries; first, we have Federal Theatres, who in turn own 100 per cent of the Bird Theatres. I can give you a schedule of that, if you care to, and attach it to this statement. It would be much easier, than to go into that.

"Q. Well, just generally, so we get the picture.

"A. Sure.

"Q. The Federal Theatres own the Bird Theatres?

"A. Right.

"Q. Who owns the Federal Theatres?

"A. The Federal Theatres stock is owned by Warner Bros. Pictures.

"Q. Inc.?

"A. Yes, sir.

"Q. What is the corporation, Warner Bros. Theatres?

"A. We have Warner Bros. Theatres of Delaware, for which we have a number of leases in here. We operate separate, again, a separate company; and the Warner Bros. Theatres of Delaware, operating theatres.

"Q. Is that an operating company, or is it a company which owns theatres?

745 "A. It is a company which owns theatres, gets fees from leases.

"Q. That is a subsidiary of Warner Bros. Pictures, Inc.?

"A. Right.

"Q. And your corporation is a subsidiary of Warner Bros.—

"A. Yes, sir.

"Q. (Continuing:) —Pictures, Inc.?

"A. Yes, sir.

"Q. Do you have any office, or are you on the Board of Directors of Warner Bros. Pictures, Inc.?

"A. No, sir.

"Q. And what is the Vitagraph Company?

"A. I don't know. My knowledge is from association with the Company. Vitagraph is a distributing corporation of Warner Bros. Pictures and First National Pictures.

"Q. Well, do you buy any film—

"A. Yes.

"Q. (Continuing) —from Vitagraph?

"A. I buy from Vitagraph.

"Q. You buy all Warner Bros. film from Vitagraph, do you not?

"A. All Warner Bros. film from Vitagraph.

746 "Q. You spoke a minute ago about the classifications of these theatres on the basis of their admission prices. What is the admission price for Loop theatres; is there a schedule of admission prices for a Loop theatre, for example, playing a picture?

"A. Well, the admission price for the Loop theatres is 75 cents, for the first run theatres.

"Q. For the first run Loop theatres?

"A. Yes; 75 cents or higher.

"Q. Being entitled to the first run Loop, a Loop run theatre would charge 75 cents?

"A. Yes; usually does.

"Q. Now, on a special run of a picture, a special showing, that admission price is upped, is it not?

"A. Yes.

"Q. That is a matter, I suppose, of special agreement between—

"A. (Interrupting:) —the distributor and the exhibitor.

"Q. There is no set price on that, though? I mean, there is no price at which that film is always shown, special exhibition is always shown; it depends on the individual picture?

747 "A. One individual picture. For instance, we have a picture here now they call "For whom the Bell Tolls". Now, we have to increase—if we want that to go in any of our theatres—I just contracted yesterday all my towns in Wisconsin, I have to charge $1.10. That is the policy; that is the policy of the Company that sells the picture, 75 cents at matinees, and $1.10 at night; and I play the picture on percentage. I have to book it in accordance with their policy.

"Q. Well, now, why do you charge that higher admission price?

"A. Why do I charge the higher admission price?

"Q. Yes; for the first run?

"A. Still I don't understand."

Mr. McConnell: And I withdrew the question.

"Q. Why is a first run theatre able to pay that sort of a price for that picture?

"A. To pay—

"Q. The higher price, the highest price?

"A. You mean to pay the rental?

"Q. Yes, the higher rental.

"A. On the first run theatres that operate, I don't know what rental they have downtown here, because

748 I do not operate any theatres downtown, but I have first run theatres similar to the downtown. See, for instance, in Milwaukee I have the Warner Theatre, which is comparable to the State-Lake or Chicago Theatre, and those pictures are played straight on percentage, straight percentage for a certain percentage of the gross receipts are the terms for the pictures.

"Q. All Loop run theatres run on a percentage, do they not?

"A. That I don't know. I don't know. See, I don't operate downtown.

"Q. You don't know of your own knowledge; you know as a matter of information?

"A. Well, I was told, yes. I was told most of the pictures downtown play on a percentage, except follow up runs."

Mr. McConnell: You have a motion to strike, there, to strike that.

Mr. O'Brien: You got an objection there.

Mr. Adcock: To strike out what he was told.

The Court: That may be stricken.

"Mr. McConnell: Q. So that the higher admission price which is made on a picture is shared by—any
749 receipts from it are shared with the distributing company, on a percentage basis?

"A. Naturally, on a percentage.

"Q. Now, the reason that that picture justifies more money on the first run is that the first run is more valuable, isn't it?"

Mr. Seeley: Now, wait just a minute. See what happened after that objection. I will withdraw the objection.

"The Witness: First run is more valuable to the extent it produces more money, more revenue, to the distributor than the overruns.

"Mr. McConnell: Q. And that is so, generally speaking down through the run, is it not, that prior runs are more valuable than subsequent runs?

"A. Yes, sir.

"Q. Do you buy Paramount product for your South side theatres?

"A. I do.

"Q. Would it be possible for you to operate your South side theatres without the product, that is, the film product of Paramount Pictures, or Warner Bros. Pictures, or Metro-Goldwyn-Mayer pictures, or Fox Film Pictures?

750 "A. It could be possible, yes.

"Q. It would not be profitable, would it?

"A. I would say not.

"Q. Do you recall a conversation that you had with Mr. Richard Salkin, a year and a half or so ago, along about May, 1942, with reference to the playing position of the Jackson Park Theatre?

"A. Oh, I asked Mr. Salkin three years ago if possible to allow the Hamilton Theatre to play the pictures in the same week but after the Jackson Park Theatre ran; and not wait seven days, the following week, to play them, because the Hamilton Theatre which I operated for Warner Bros. repeats the pictures after the Jackson Park Theatre. At that time he told me it was possible that there can be

an arrangement, and we would try it for a period about six months, if not longer, I don't remember.

"Q. What time was this conversation, do you remember?

"A. Oh, possibly three years ago I asked about that, some time about that time, I don't remember exactly.

"Q. You cannot fix the date any closer than that?

"A. No, I cannot fix the date because Mr. Salkin
751 always contacted my bayer, Mr. Halperin. I knew Salkin for years, and I also know Mr. Bloom, and I met him at the office one day and I asked him that.

"Q. Well, you were back in a conference about three years ago between yourself,—

"The Witness: (Interrupting:) Mr. Salkin—

"Mr. McConnell: Q. (Continuing:) —Mr. Salkin?

"A. I don't know whether Mr. Halperin was there or not.

"Q. Let's see who was there. Who was there at that time?

"A. Well, Mr. Halperin possibly was there. He was in the office. He has an office next to mine.

"Q. All right. Now, just tell us what was said there.

"A. I asked Mr. Salkin about having the Hamilton to waive some clearance, to let the Hamilton play not ahead of the Jackson Park but after the Jackson Park, but in the same week. For instance, pictures that played on Sunday and Monday at the Jackson Park, have the Hamilton play them Thursday or Friday of the same week, and the admission price will be the same; we charged the same admission price as Jackson Park was doing, which we
752 are doing today. He agreed to that, and we played the pictures for about six months that way. Later he called one day, and he said Mr. Bloom objected very strenuously to the Hamilton Theatre continuing playing the pictures in the same week with the Jackson Park, and asked us to please—he asked me, asked the Companies to please—to have the Hamilton repeat the following week, which we did. That is the conversation that I know.

"Q. Wasn't there talk at that time, that as a consideration for this you would use your good offices in trying to obtain the Jackson Park playing position in C week?

"A. I told him at that time we were contemplating, if possible, to play the Jeffery Theatre for a week earlier run, if the Tower will waive its clearance, and the Picca-

dilly will waive its clearance, and have the Jeffery play in B week rather than C week, and the Jackson Park it will increase its admission price, they can take the run of the Jeffery, which is C following the Jeffery, but a week earlier than it now plays the pictures.

Of course, everything was dependent upon the Piccadilly and the Tower Theatre agreeing to have the Jeffery Theatre play a week earlier.

753 "Q. Did you take that up with Mr. Balaban?

"A. No, I did not take that up with Mr. Balaban. I took the matter up with the film companies from whom I buy the pictures, and they told me they will not allow the Jeffery Theatre to move up, as we will say, to B week.

"Q. What film companies did you take that up with?

"A. Oh, I don't know. Fox, possibly, Paramount, all the Companies we do business with, including our own Company.

"Q. Did you tell Mr. Salkin that?

"A. I did.

"Q. Leo Salkin, you told him about that?

"A. I told him the companies will not permit—will not be able to give us that run.

"Q. Did you tell him the Jackson Park could not move up?

"A. No, because the Jeffery cannot move up. See, one has to move. The Jeffery has clearance over the Jackson Park, and the Tower and Piccadilly have clearance over the Jeffery.

"Q. Did you tell him Mr. Balaban would not agree to that?

"A. I did not. I didn't talk to Mr. Balaban.

754 "Q. Did you tell him Balaban & Katz would not agree to it?

"A. No, I did not.

"Q. They would not agree, would they?

"A. See, it would not be up to Balaban & Katz to agree to that, because I don't do business with Balaban & Katz. It is up to the film companies who sell me the pictures. They are the ones I have to see. They are the ones that have the right to give me any authority on that. Of course, the film companies possibly have to take the matter up with their other accounts, to see if it is with their approval, but I did not talk to them.

"Q. They would have to take it up with Balaban & Katz?

"A. Or the Piccadilly, which is owned by Schoenstadts.

Mr. McConnell: Then Mr. Seeley moves to strike the last question and last two answers, as being hypothetical. Do you again want to make that motion?

Mr. Seeley: Yes. I move to strike the question as to who the distributors would have to take it up with, on the ground it is hypothetical. This witness wouldn't know.

755 The Court: Motion is allowed; it may be stricken.

"Mr. McConnell: Q. You do not recall anything else of that conversation?

"A. Now, no, I do not recall.

"Q. Did you ever try to buy the Jackson Park Theatre, or lease it from Mr. Bloom, Edward I. Bloom?

"A. I received three letters from three different real estate agents, offering for lease or sale, the Jackson Park Theatre."

"Q. I didn't ask you that. I ask that that go out as being unresponsive to my question."

The Court: It may be stricken.

"Mr. McConnell: Q. I asked you whether you had ever tried to buy the theatre?

"A. I never tried to buy the theatre, except if you don't mind my answering you, I met Mr. Bloom at the Club, South Short Country Club, where he and I are members, and I told him there was somebody that was offering his theatre for sale, if he wants to lease his theatre and sell, I know him long enough, that it is best that we deal direct rather than through agents; and I met with Mr. Bloom, and he told me he prefers to sell the building, he did not want to lease the theatre.

756 We looked over the building with some of our men. I had Mr. McDonald from New York come in and look at the building. The building was not the type we wanted to buy. It was too big of a building, too much commercial. The condition of the building was bad, as we considered it, so we decided we did not need the building at all. That is as far as we went. I did not talk to him.

"Q. How long ago was that?

"A. Possibly two years ago.

"Mr. McConnell: That is all."

Mr. McConnell: Do you want your cross?

Mr. Seeley: Give us a minute to look it over.

757 Mr. Seeley: I would like to have my cross, from 259 to the middle of 261, please. If it would rest your voice any, Mr. McConnell, I would just as soon read the questions.

Mr. McConnell: Go ahead.

Mr. Seeley: (Reading from deposition:)

"Q. Can you tell me who operated the Woodlawn Theatre when it was operated in 1918 or 1919?

"A. Yes. Mr. Andrew Karzas, and I was interested myself.

"Q. Now, when a theatre operator wants to procure films to exhibit in his theatres, he has to get them from a film distributor, doesn't he?

"A. Correct.

"Q. And in doing that he enters into a contract with the distributor?

"A. Right.

"Q. Which describes the pictures involved in the deal, and the film rental, the run and the availability?

"A. Yes.

"Q. And all the other terms in the picture?

"A. Yes, sir.

758 "Q. And if a theatre operator cannot enter into such a contract, then he has no pictures for his theatre, has he?

"A. That is right. If we do not buy pictures we do not have any pictures.

"Q. Mr. McConnell put a question to you concerning Loop theatres, and the sense of it was whether the theatre which charged 75 cents was entitled to pictures in the first run. Now, a theatre does not become entitled to anything just by charging 75 cents, does it?

"A. No, no, no. It doesn't entitle it to anything unless it negotiates, buys those pictures.

"Q. All right.

"A. Of course, merely by the theatre charging 75 cents does not entitle it to a picture. There are a number of theatres downtown, the Oriental and McVickers, and others, that are not entitled to first run unless they negotiate and by first run from the companies.

"Q. Now, you mentioned at least two theatres which were operated prior to 1930 by National Play Houses. Do you know whether Warner Bros. had any interest in

759 National Play Houses at that time?

"A. They didn't have any interest. I operated the

National Play Houses for the receiver, in 1927, late in 1927 until 1928. I should say until 1930, 1928 to 1930.

"Mr. Seeley: Yes, thank you.

"Q. You spoke also of prior runs being more valuable than subsequent runs. Did you mean by that anything more than that the film rental which a distributor receives for a prior run license is generally higher than the film rental which a distributor receives for the subsequent runs?

"A. No, I mean exactly film rental.

"Q. That is right.

"A. That is right.

"Mr. Seeley: That is all."

Mr. McConnell: Then our redirect goes on:

Redirect Examination by Mr. McConnell.

"Q. Do you mean that is only more valuable to the distributor and not more valuable to the exhibitor?

760 "A. Well, no. It is more valuable to the distributor on prior runs because he receives a bigger film rental from the theatre on prior runs.

"Q. But the theatre owner is willing to pay a big rental because first run is more valuable to him than subsequent run, isn't that the fact?

"A. The theatre—well, the ability of the theatre to pay more rental.

"Q. It has ability to pay more because it gets more gross receipts from a prior run than it does from a subsequent run?

"A. That is right."

Mr. Seeley: I don't know how I got in at this point, but it says I asked this question:

"Q. The value of an early run to a theatre would depend somewhat on the kind of theatre it was and where it was located, and other things besides just the run, wouldn't it?

"A. Of course, the ability, the capacity of the theatre, the admission prices, the possibilities of the theatres."

761 Mr. McConnell: Shall we skip the rest of it?

Mr. O'Brien: I have a few questions.

(Reading recross examination from deposition:)

Recross Examination by Mr. O'Brien.

"Q. When you talk about the National Play Houses, was that the Cooney Company?

"A. Cooney's, it was known to the men in the trade as Cooney's, but really it was National Theatres; was a corporation.

"Q. Now, the Avalon was opened by the National Play Houses?

"A. Yes, sir.

"Q. And that was true also of the Jeffrey?

"A. No.

"Q. Who opened that?

"A. The Jeffery was opened by a fellow by the name of Goldberg.

"Q. Prior to 1930 did Warner Bros. have any interest in any of these theatres which have been mentioned?

"A. None.

"Q. And are these theatres, as now operated by you, playing in the same positions which they were at the 762 time you acquired them?

"A. Identical.

"Q. In 1922, when the Tivoli opened, or was opened by Balaban & Katz, was Balaban & Katz affiliated in any way, if you know, with Paramount?

"A. They were not affiliated with Paramount, because I was playing Paramount pictures at the Woodlawn Theatres. In those days they were not.

"Q. And back in 1927, I believe that is the date you mentioned, the Stratford as well as the Woodlawn was playing ahead of the Jackson Park?

"A. Sir?

"Q. The Stratford was playing ahead of the Jackson Park, was it not?

"A. Yes. In nineteen what—'27?

"Q. '27?

"A. I want to refresh my memory on that. The Stratford played—yes, the Stratford Theatre played ahead of the Jackson Park in 1927.

"Q. After the Grove and the Jeffrey were built and opened, I think you said they, too, played ahead of the Jackson Park?

"A. After they were built?

"Q. Yes; as soon as they opened.

763 "A. I think certain pictures played ahead of the Jackson Park, and others—most of the pictures in those days played ahead of the Jackson Park, to my knowledge, of those days. I didn't operate those houses, so I don't know."

Mr. McConnell: I move to strike his answer, then, if he didn't know.

The Court. That part may be stricken.

Mr. O'Brien: (Resuming reading from deposition:)

"At that time were those houses operated by so-called independent exhibitors?

"A. The Jeffery was an independent exhibitor.

"Q. Who operated the Grove, Lubliner & Trinz?

"A. The Jeffrey didn't operate—Lubliner & Trinz did not operate the Jeffery Theatre.

"Q. No, the Grove, I mean.

"A. The Grove, well, Lubliner & Trinz had a circuit of theatres, therefore, those days we did not call them independent.

"Q. I mean, they were not affiliated with any of these producer—or distributor defendants?

"A. No, no."

764 Mr. O'Brien: That is all the cross.

Mr. McConnell: That is all of that deposition.

Mr. Seeley: All right.

765 Mr. McConnell: Now the deposition of Mr. Jack Shumow.

Mr. Seeley: What page?

Mr. McConnell: That is at 269.

Mr. Seeley: I have it.

Mr. McConnell: (Reading from deposition:)

"Q. You stated your full name for the full record?

"A. Yes.

"Q. Where do you live?

"A. 2842 Sheridan Road, Chicago, Illinois.

"Q. What is your business or occupation?

"A. Resident manager of Vitagraph, Incorporated.

"Q. And where is your place of business, what is your address?

"A. 1307 South Wabash Avenue.

"Q. And how long have you been so employed?

"A. Since April 12, 1942.

"Q. And what was your business prior to that time?

"A. Branch Manager for Vitagraph, Incorporated, at Omaha, Nebraska.

"Q. So that you have not been in the District, in the Chicago Exchange District prior to 1942, is that 766 true?

"A. Not as Branch manager.

"Q. Have you had employment here in this district prior to 1942?

"A. Yes. I entered the employ of Vitagraph, Incorporated, in July of 1940.

"Q. Prior to 1940 where were you employed?

"A. I was employed by Metro-Goldwyn-Mayer, as sales manager in the Chicago Office, from January 3rd, 1938, until July of 1940.

"Q. And prior to that time by whom were you employed?

"A. I had charge of sales for Metro-Goldwyn-Mayer, and traveled in Wisconsin, out of the Milwaukee office, Milwaukee manager.

"Q. Are you familiar with the term 'protection letter?' Does that mean anything to you?

"A. Nothing.

"Q. Do you know of letters that are written asking the distributor of film for the granting of a certain protection schedule for the circuits?

"A. No letters are written for clearance of any kind by circuits.

"Q. Are you speaking now of the time you have 767 been in charge of the office, or are you speaking generally?

"A. I am speaking for the time I have charge of the office.

"Q. You have no such letters?

"A. No, sir.

"Q. Who negotiates on behalf of—what particular person negotiates on behalf of Vitagraph, with theatres in the Chicago Exchange District, on the matter of clearance?

"A. For who?

"Q. For Vitagraph.

"A. For what companies? Independent exhibitors or who? What do you mean? I don't get that. We deal with the clearance when we negotiate a deal for the pictures.

"Q. All right. 'We', who is 'we'? That is what I am trying to get at. Who is 'we'?

"A. The first run, I do, I negotiate the clearance.

"Q. Who negotiates the first run.

"A. For the sale of the product?

"Q. Yes.

"A. Mr. Kalmenson and myself, and the District Manager.

768 "Q. And is the first run negotiated prior to the subsequent runs?

"A. Yes, sir.

"Q. In your negotiations with Balaban & Katz do you negotiate for the product for all of their theatres?

"A. Eventually we do, but we do not do it all at one time.

"Q. Well, what is the procedure in your negotiation of first run?

"A. At one time.

Q. For all their theatres?"

Mr. O'Brien: He is not questioning there; he asserts "At one time."

Mr. Korfist: "At one time." You are quite right.

Mr. McConnell: (resuming readings:)

"Q. For all their theatres?

"A. For the first run; we can only exhibit a picture in one theatre in first run.

"Q. Well, they have a number of first run theatres?

"A. We generally play our pictures in one theatre 769 at a time. We negotiate for the picture for the theatre at that time, and after the picture has finished its first run engagement, negotiations are made for the outlying theatres.

"Q. All of them or part of them?

"A. All or part of them, and all of the outlying theatres.

"Q. That would include their A and B houses, would it not?

"A. Yes. All the theatres—all theatres that we serve of Balaban & Katz. We do not serve all their theatres 100 per cent in the city of Chicago, but the theatres that we do sell them we negotiate at that time.

"Q. And do you negotiate in the same manner with Warner Bros. Theatre Management?

"A. Well, for Warner Bros. Theatre Circuit Manage-

ment I receive the designation of rental for the picture from our Home office, and I draw up a contract and send it to the Theatre Department for signature.

"Q. So that is not handled by you personally; that is handled in New York?

770 "A. That is right.

"Q. Did you negotiate your deals with Warner Bros. and Balaban & Katz prior to taking up your independent deals with independent theatres?

"A. Yes."

Mr. McConnell: Do you want your cross?

Mr. O'Brien (reading from deposition):

Cross-Examination by Mr. O'Brien.

"Q. Mr. Shumow, are there some instances that you can recall in which you sell part of a product to B. & K. and part to independents?

"A. Oh, yes.

"Q. Can you name any of those?

"A. Yes. In Berwyn, Illinois, we sell fifty percent of our product to the Village Theatre, operated by Jacob Lasker & Son, and fifty per cent of our product to the Balaban & Katz Berwyn Theatre. On 12th Street we sell Jack Hirsch,"—

Mr. Korfist: I think they mean Kirsch—

"—who operates the Twentieth Century Theatre; fifty per cent of our product, and the other fifty per cent to Balaban & Katz in their Central Park Theatre."

771 Mr. Adcock: That ought to be corrected to Kirsch.

Mr. Korfist (continuing reading from deposition):

"On Lawrence Avenue we sell fifty per cent of our product to Abe Feder, operating the Metro Theatre, and fifty per cent of our product to Balaban & Katz Terminal Theatre.

"Mr. Brien: That is all I have."

Mr. O'Brien: I believe you corrected that name Hirsch to Kirsch. That was the chap who testified here.

Mr. Korfist: Kirsch.

Mr. McConnell (reading from deposition):

"Q. Is that what you call a split product deal?

"A. That is a split product."

Mr. Adcock (reading from deposition):

"Q. Well, do you license pictures to Balaban & Katz for exhibition at the Tivoli Theatre and Southtown?

"A. No, sir."

772 Mr. McConnell: That is all the depositions, if the Court please.

The Court: Any other witnesses?

Mr. McConnell: Yes, I want to call Mr. Immerman.

The Court: Suppose we take our customary recess then for about ten minutes.

(A recess was accordingly taken, after which the following further proceedings were had:)

773 Mr. McConnell: Will you mark this with the next identification number, I think it is 45.

(Document marked Plaintiffs' Exhibit 45 for identification.)

Mr. Immerman, will you take the stand, please?

WALTER IMMERMAN, called by the plaintiffs as an adverse witness, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please?

A. Walter Immerman.

Q. Where do you live?

A. 33 East Bellevue, Chicago.

Q. What is your business or occupation?

A. I am with Balaban & Katz, in the exhibition of motion pictures.

Q. Have you an office, I mean an official title?

A. Vice-President of Balaban & Katz.

Q. How long have you been Vice-President of Balaban & Katz?

A. Since about 1930, August.

774 Q. And prior to that time, what was your business?

A. The same business, in Detroit.

Q. And what was your official position with the company there?

A. I was city manager of its operations in Detroit.

Q. What was the name of the company?

A. I think it is Publix-Michigan, Incorporated.

Q. I show you a document which is marked for identification Plaintiffs' Exhibit 45 and ask you to examine that document and state, if you will, who prepared it.

A. It was prepared by clerks in our office.

Q. Was it prepared under your supervision?

A. Yes, sir.

Q. And is the date set forth there truly and accurately set forth, do you know?

A. It should be. It was directed to be made that way.

Q. Would you say that it was or it was not?

A. I would say it was.

Mr. McConnell: I want to offer this document in evidence at this time, if the Court please?

The Court: Any objection?

1775 Mr. Seeley: No objection.

Mr. Adcock: No objection.

Mr. O'Brien: No objection.

The Court: It may be admitted.

(Said document, so received in evidence, was marked PLAINTIFFS' EXHIBIT 45, and is in words and figures as follows:)

776 Mr. McConnell: I will show you the document. You may keep it for reference for the time being.

Could I see your copy in examining the witness?

Mr. Adcock: Yes. (Handing document to counsel.)

Mr. O'Brien: There is one thing I noticed on that, Mr. McConnell. Is the Riviera date correct there, as I see on this copy?

Mr. McConnell: Calling your attention to the—

Mr. O'Brien: Excuse me just a second.

The Witness: The date of what?

Mr. O'Brien: The Riviera.

The Witness: What date do you question?

Mr. O'Brien: The first date.

The Witness: It was acquired by lease September 29, 1928, it says here.

Mr. O'Brien: I see. I thought that was 1938. That is correct. O.K.

Mr. McConnell: Q. Now, the first column on this chart sets forth the names of your different theatres of the Balaban & Katz chain, isn't that correct?

The Witness: A. Yes, sir.

Mr. Adcock: I suggest that the jury have that.

Mr. McConnell: It will.

777 Q. And the second column sets forth the date upon which the different theatres there named are acquired, is that correct?

A. Yes.

Q. And the designation "A.L." is acquired by lease, right?

A. Yes.

Q. And "A.P." is acquired by purchase, is that correct?

A. Yes.

Q. Now, in 1936 you will find a column which is marked "D.F." What does that designation refer to, under the column 1936, the year at the top of the chart?

A. I see that "D.F." all the way through. I don't recall what it represents.

Q. That reference is to denote double feature policy, isn't it?

A. Oh, yes. It could, yes.

Q. Instituted at that time?

A. That is right.

Q. And where that appears that shows the exact date on which the Balaban & Katz particular theatre introduced double features?

A. Yes, sir.

778 Q. Now, there were certain changes made in the runs of the Balaban & Katz theatres in 1936, were there not?

A. I would not call them changes in runs, only as the particular period refers to a previous—immediately previous period. For instance, the first one I see here, is the Century. It was playing in C in 1935, and changed to B in 1936, but it had been B all the time prior to 1933.

Mr. McConnell: Well, now, I did not ask you that, I move that go out.

The Court: It may go out.

Mr. McConnell: I asked you whether there were any changes in 1936.

Mr. Adcock: Well, I move that—I object to the question, because the document received in evidence speaks for itself.

Mr. McConnell: I think I have a right to show to the jury—

The Court: What is the question?

Mr. McConnell: I asked if there were such changes made in 1936 in the runs of the Balaban & Katz theatres.

The Court: He may answer that question.

The Witness: Yes.

779 Q. Now the Crystal Theatre on December 27, 1936, was changed from a first week run to a C run, was it not?

A. Yes.

Q. And the Gateway Theatre was changed from a C run to a B run November 19, 1937, was it not?

A. Yes.

Q. Now, both of those runs were earlier runs than the one from which they were changed?

A. Yes.

Q. The Granada Theatre was changed, on March 27, 1936, from a B run to an A run, was it not?

A. Yes.

Q. And the Harding Theatre was changed, on November 27, 1936, from a B to an A run, was it not?

A. Yes.

Q. And the Norshore Theatre was changed, on November 28, 1936, from a C to a B run?

A. Yes.

Q. And the Nortown was changed, on April 10, 1936, from a C to a B run?

A. Yes.

Q. The Oriental was changed, on February 5, 1937, from B to a Loop run, was it not?

A. Yes.

780 Q. And then was closed on May 26, 1938?

A. Yes.

Q. And the Pantheon was changed, on January 22, 1937, from a C to a B run, was it not?

A. Yes.

Q. The Regal was changed, on October 8, 1937, from a C to a B run, was it not?

A. Yes.

Q. And the Riviera, on June 12, 1936, was changed from a B to an A run, was it not?

A. Yes.

Q. The State-Lake was changed, on October 24, 1941, from a B run to a Loop run, was it not?

A. Yes.

Q. And the Tower Theatre was changed, on October 30, 1936, from a C to a B run?

A. Yes.

Q. And the Varsity Theatre, on July 16, 1937, was changed from a B to an A run?

A. Yes.

Q. Now, before those changes were made, did you obtain the consent of all the distributors who were distributing pictures to the Balaban & Katz circuit?

A. I could assume that I did, or would not be served product, where it was necessary. It may not have
781 been necessary.

Q. Well, would your answer, on the basis of your assumption, be yes—

A. Yes.

Q. Or no?

A. Yes.

Mr. McConnell: I will ask you to mark this Exhibit 46.

(Document marked Plaintiffs' Exhibit 46 for identification.)

Q. I show you a document which has been marked for identification Plaintiffs' Exhibit 46, and ask you to examine that document and state what you know as to its source.

A. I recognize it as a franchise.

Q. Well, did you produce it from your custody, in this case?

A. Yes, I recall producing it.

Q. And can you state whether or not it is what it purports to be, a franchise between your company and some other company?

A. Yes.

Q. And it is a true copy, is it?

A. Yes.

Q. Will you turn to the signatures on it and see if you can identify those signatures?

782 Mr. Adcock: Is that the document I furnished you, Mr. McConnell?

Mr. McConnell: Yes, it is.

Mr. Adcock: It is not necessary to go further, then, into identification of it.

Mr. McConnell: All right. With that statement I will offer the document in evidence as Plaintiffs' Exhibit 46.

The Court: Any objection?

Mr. Seeley: That is Loew's franchise, isn't it?

Mr. McConnell: It purports to be a franchise between Metro-Goldwyn-Mayer which we have stipulated as now Loew's,—

Mr. Seeley: Yes. Well, I have no objection.

Mr. McConnell: —and Balaban & Katz Corporation.

Mr. O'Brien: Except the standing objection that we have.

The Court: So long as it doesn't apply to your clients, why of course it does not apply to them, unless it affects them somehow or other later on.

(Said document, so offered in evidence, was marked PLAINTIFF'S EXHIBIT 46 and is in words and figures as follows:)

783 Mr. McConnell: Q. Can you make out that signature on there "Walter Immerman"?

The Witness: A. I thought I recognized it a minute ago. Yes.

Q. Will you turn to this document to the provisions on admission prices?

A. Page 20.

Q. Will you read what it says on page 20 about admission prices?

784 The Witness: A. (Reading) "Exhibitor agrees that it will not without the prior written consent of Metro reduce admission prices for the engagement of any feature motion picture covered by this agreement below those shown on the annexed 'Admission Price Schedule.'"

Mr. McConnell: Q. Now, will you turn to the next Admission Price Schedule.

A. Page No.,—I have it.

Q. Will you read the schedule of prices?

A. I can't read it completely without taking this thing apart. I will do the best I can.

Commencing with the names of the theatres: United Artists, Roosevelt and Chicago: Opening to 1:00 p. m., children, 15, adults, 25; 1 p. m. to 6 p. m., children, 15, adults, 30; 6 p. m. to closing, children, 15, adults, 50. That is week days. Those prices at the top says "week days." Saturdays, same as weekdays.

Under Sundays and Holidays: Opening to 5 p. m., children, 15, adults, 50. It is hardly legible. 5 p. m. to closing,—I can't read it. "Prices are changed with each picture in United Artists and Roosevelt."

Chicago Theatre: Opening to 3 p. m., children, 10,
785 adults, 25, weekdays 3 p. m. to 6:30 p. m., children, 15, adults, 30. 6:30 to closing, children, 15, adults, 50. Sundays and Holidays, opening to 5 p. m., children, 15, adults, 50. I can't read that, but I know what it is.

Q. What is it?

A. Children, 15, and adults, 50. This is from 5 p. m. to closing. Sundays and Holidays, children, 15, and adults, 50; and from 5 p. m. to closing, 15 and 50. Saturdays same as weekdays.

The next is Apollo and Garrick: Opening to 1 p. m., children, 10, adults, 25; 1 p. m. to 6:30, children, 10, adults, 30; 6:30 to closing, children, 10, adults, 50. Saturdays same as weekdays. Sundays and Holidays all day, children, 10, adults, 50.

Oriental Theatre: Weekdays. Opening to 6:30 p. m., children, 10, adults, 25; 6:30 to closing, children, 10, adults, 40. Saturdays same as weekdays. Sundays, all day, children, 10, adults, 40. Pre-Release "A": Granada, Marbro, Riviera, Southtown, Tivoli, Uptown.

Matinee: Children, 10c, adults, 30c.

Evening: Children, 10c, adults, 50c.

786 Pre-Release: "B": Century, Harding, Nortown, Paradise, Varsity.

Matinee: Children, 10c, Adults, 25c.

Evening: Children, 10c, Adults, 40c.

Pre-Release "C": Belmont, Belpark, Berwyn, Central Park, Congress, Gateway, La Grange, Manor, Maryland, Noroshore, Regal, Senate, State, Terminal and Tower.

Matinee: Children, 10c, Adults, 20c.

Evening: Children, 10c, Adults, 30c.

First Week: Biltmore, Covent, Crystal, Lakeside.

Matinee: Children, 10c, Adults, 15c.

Evening: Children, 10c, Adults, 25c.

Third Week: New Lain.

Matinee: Children, 10c, Adults, 15c.

Evening: Children, 10c, Adults, 20c.

That is all of the schedule.

Mr. McConnell: Q. Now, calling your attention to paragraph 35 of this agreement, will you read that to the jury, please.

A. Do you want me to re-read the first part of the paragraph?

Q. Yes.

A. (Reading:) "Exhibitor agrees that it will not
787 without the proper written consent of Metro reduce admission prices for the engagement of any feature motion picture covered by this agreement below those shown on the annexed 'Admission Price Schedule.'."

"It is understood that the availability, (Pre-release 'A', 'B', etc.,) sets forth on said Admission Price Schedule is based upon the admission prices therein set forth for the respective theatres for the respective week of release, and agreed that in the event Metro permits the exhibition by any other exhibitor of any of the feature motion pictures covered by this agreement at lower admission price for the respective week of release, then Exhibitor shall not be required to obtain Metro's consent to a similar reduction of its admission price for the engagement of any such pictures."

Q. Now, Mr. Immerman, this contract, this particular document, Plaintiffs' Exhibit 46, is what is known as a percentage contract, is it not?

Mr. Adcock: I object to that question, if the Court please. I think the document speaks for itself.

The Court: Objection sustained. I suppose the
788 contract does speak for itself, does it not?

Mr. McConnell: It is a preliminary question. I am trying to show here the effect of the percentage on this provision about admission prices. I would save a lot of time by showing it by this witness.

Q. Isn't it a fact that the distributor, which in this case is Metro-Goldwyn-Mayer, participates in the box office receipts under that?

Mr. Adcock: I object. The contract speaks for itself.

The Court: I think, from that standpoint, the objection is good; but he says this will shorten it, that if he has to go the entire way, it is a longer way.

Mr. McConnell: Otherwise I will have to read the whole thing to the jury to have it before them. I have a right to read the question to them. I am just trying to shorten it.

Mr. Adcock: I don't think counsel has a right to interpret the question.

The Court: You can refer to the same language, but as to what it means, the jury is going to say that.

789 Mr. O'Brien: As far as Vitagraph is concerned, we have no objection to showing the percentage arrangements with the exhibitors.

The Court: Does that contract show what the percentages are?

Mr. McConnell: Yes, it shows that.

The Court: What is the question you are trying to have answered?

Mr. McConnell: I want to get before the jury, without reading all the provisions, that this is a percentage contract by which the exhibitors share with the box office receipts.

The Court: Does it say that in the contract?

Mr. McConnell: It says in effect that their take is based upon what their admissions are, and all that.

The Court: What you are in fact asking is, what the language in the contract means, and that is what Mr. Adcock objects to.

Mr. McConnell: Well, I will have to ask him to read the provisions.

Mr. Adcock: I have no objection to the witness being asked how the contract operates; that is, how they carry out a particular job—

790 Mr. McConnell: That is all I want.

Mr. Adcock: But that is not the question he asked.

The Court: How do they operate under this sort of contract? You don't object to that question?

Mr. Adcock: No.

The Court: Suppose you put it that way.

Mr. McConnell: Q. How do you operate, so far as rental of the film is concerned?

The Witness: A. If my memory serves me right, there are three different operations within that franchise.

Mr. O'Brien: What is the date of that?

Mr. McConnell: September 1, 1936.

Mr. O'Brien: That is the 10-year?

Mr. McConnell: No, the 5-year.

The Witness: A. There are three plans affecting pictures in playing positions. First run, the same, a percentage of the gross; and same flat rental.

Q. Well, now, will you state, after examining page 4, what that percentage is?

A. For each picture?

Mr. Adcock: What page?

791 The Court: Page 4.

The Witness: A. For each such picture exhibited

at United Artists or Roosevelt, 70 per cent of all gross receipts of each week for the respective week; such expense to be endorsed by Metro as hereinafter provided.

Mr. McConnell: Q. So that is what you calculate the percentage contract to be?

A. For the pictures playing at United Artists and Roosevelt. There are other stipulations.

Q. What are the others?

A. (Reading.) "As to each such picture exhibited at the Chicago Theatre, the license fees to be paid are to be mutually agreed upon at the time the respective picture is booked for exhibition at such Chicago Theatre, and if not then agreed upon the picture is to be exhibited and the terms for such picture are to be agreed upon between Mr. Barney Balaban (or another person designated by Exhibitor) for Exhibitor, and Mr. A. L. Lichtman (or another person designated by Metro) for Metro, and if they cannot agree shall be determined by arbitration in the manner hereinafter provided for.

792 "As to each such picture exhibited at the Chicago Theatre Exhibitor agrees to pay to Metro, in addition to the foregoing, a score charge of one Hundred Fifty ($150.00) Dollars for each seven (7) days or each flat rental picture."

Mr. McConnell: All right.

A. That covers the first run of those three houses.

Q. Now, calling your attention to page 3 of the clearance schedules, Maryland Theatre, will you read those provisions?

Mr. Adcock: Where is that?

The Witness: A. Page 3 of the clearance.

Mr. McConnell: Page 3 of the clearance schedule.

The Witness: A Maryland, under playing position B or C, under clearance: "Drexel, Langley, and Midway," which are the names of the theatres, "not to play earlier than second week general. Jeffery and Grove to play in same week as Maryland. Lexington, Kimbark, Jackson Park, Frolic, Plaisance, and Amo not to play earlier than first week general," first week of release. It says here "First week general."

Q. The Jackson Park is the plaintiff theatre in this case, is it not?

A. Yes.

Q. Now, you stated to the jury, read to the jury,
793 the provisions that if a distributor for permits any exhibitor to have the pictures in different runs at lower admission prices than those scheduled, then Balaban & Katz will have a right to depart from those admission schedules, is that right?

A. Yes.

Q. And if you did depart from those admission schedules, you would reduce the box office receipts for your theatres, would you not?

A. I wouldn't know.

Q. Well, would you say that in your Loop runs, if you reduce the price of the admission schedules, that your box office receipts would be higher or lower?

A. It would be lower.

Q. And the distributor would receive less rental, then?

Mr. O'Brien: I think I would object to that, unless he specifies the conditions and times, which are reduced.

Mr. McConnell: I am cross-examining this witness.

Mr. O'Brien: You did not say so.

Mr. McConnell: I am calling him as an adverse witness. I am calling him here for cross-examination.

794 The Court: I think I will overrule that objection. He may answer.

The Witness: I have forgotten the question.

Mr. McConnell: Will you read the question to the witness, please?

(Last question read by reporter.)

The Witness: A. If he were involved in the results of the engagement.

Q. And it was, was he not, under this contract?

A. Not always.

Q. He was in the Loop theatres?

A. Not always.

Q. Well, in those that he was, he would be?

A. Yes.

The Court: That was the reason for his objection. You finally got down to it. Now you have cured it.

Mr. McConnell: Q. How many theatres has Balaban & Katz acquired since you have been connected with the Balaban & Katz organization?

A. Where?

Q. In the city of Chicago or its environments, what you would call the Chicago Exchange District.

795 A. I wouldn't know as to the entire district, but I do know as far as the city of Chicago and its immediate suburbs are concerned. I should know. I don't know that I do know offhand. I think there is a record of it.

Q. What is your recollection of it?

Mr. Adcock: May the witness refer to the chart, Exhibit 45?

Mr. McConnell: If it will help him any.

The Witness: A. They had about thirty theatres when I came with the company. As I recall, they have about fifty now.

Q. So you acquired about twenty?

A. About twenty.

Q. While you have been there?

A. Yes.

Q. Now, you understand what a clearance agreement is?

A. Yes.

Q. How long does clearance run?

A. How long does it run?

Q Yes.

A. Where?

Q. Well, I will put it this way: Does clearance run any longer than any given contract provides for it to run?

796 A. No.

Q. It expires with the contract, does it not?

A. Yes.

Q. Which creates the clearance?

A. Yes.

Q. I show you a document which has been marked for identification as Plaintiff's Exhibit 44, and will ask you to examine that document and state, if you will and if you know, who prepared it.

A. I don't know who prepared it. I have never seen it before. It probably was prepared by our accounting department.

Q. Can you identify it as prepared by your accounting department?

A. Sorry. I can't.

Mr. McConnell: How about you, Mr. Adcock?

Mr. Adcock: I don't know what it is.

The Witness: A. I don't recognize the handwriting. There is no marking on it.

Mr. McConnell: I want to offer it in evidence, if you have no objection to it.

Mr. Adcock: As to the document, it is a document I furnished to Mr. McConnell at his request. As far as Balaban & Katz and Paramount are concerned—

797 The Court: I take it, then, you have no objection to it being admitted into evidence?

Mr. Adcock: Oh, yes, we have.

Mr. O'Brien: We object to the competency and relevancy, as to my defendants, your Honor.

Mr. Seeley: Yes, and as to my defendants.

The Court: You have a general objection that goes all through the case, but unless they are the connected evidence of an individual, it does not apply to all of them, does it?

Mr. Adcock: My objection to it as to relevancy and competency and materiality, your Honor.

The Court: I thought you did not object to it.

Mr. O'Brien: My objection, your Honor, is to the immateriality, irrelevancy of this document, in so far as it purports—

The Court: I understand this is a record taken from the books and accounts of the defendant, Balaban & Katz and—

Mr. Adcock: It is a document which counsel asked us to prepare from our books for the sake of—

The Court: Instead of bringing the books in here, you have this document.

Mr. Adcock: Yes. It states the truth.

798 The Court: Whatever the objection is, it has no materiality as far as this lawsuit is concerned, is that it?

Mr. Adcock: Yes.

The Court: What is it, anyway?

Mr. McConnell: The Profit and Loss Statement of the Maryland Theatre owned by Balaban & Katz Corporation.

The Court: That is the same kind of evidence you put in. Objection overruled. It may be admitted.

Mr. O'Brien: I would like to get their specifications,—I am not merely objecting to the operations of that theatre, but under the cases relating to the subject which counsel is now approaching, it can have nothing to do with the

point in question, as to the arguments made the other day. I want the record to show that.

The Court: The arguments you made at the introduction of similar testimony?

Mr. O'Brien: We don't consider the testimony similar, if your Honor please, nor touching the same subject.

The Court: They were designating to the question put by Mr. McConnell?

799 Mr. Adcock: Yes.

Mr. Seeley: I guess my statement of objections could be covered by saying it goes to all those I made previously, with reference to Mr. McConnell's offer of proof on the subject of damages. Will that be sufficient?

The Court: Yes, sir, that is sufficient for anybody, but it is overruled. Now, what is your question?

Mr. McConnell: Before I go into this next branch, I have not calculated my time very well here. I have a witness who cannot be here tomorrow.

The Court: Where is he?

Mr. McConnell: He is here. I wonder if I can interrupt this witness and put him on now.

The Court: Yes. Mr. Immerman, you don't object to stepping down a while, do you?

The Witness: No, sir.

(Witness excused temporarily.)

800 A. B. BUTLER, a witness produced on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. Will you state your full name, please.
A. A. B. Butler.
Q. Where do you live, Mr. Butler?
A. My home address?
Q. Yes.
A. 5214 Woodlawn Avenue.
Q. What is your business or occupation?
A. Public accountant.
Q. How long have you been so engaged?
A. About seventeen years.
Q. Are you in business on your own account?

A. Yes, I am. I have been in active business on my own account for about seventeen years.

Q. Prior to that, what was your business?

A. Prior to that I was auditor for a concern that owned some apartment hotels, about sixteen apartment hotels. Prior to that I was assistant accountant for the Freeport Sulphur Company, Freeport, New York.

801 Q. Have you in your possession any books and records of the Jackson Park Theatre?

A. Yes, I have.

Q. What records do you have?

A. I have some reports that I prepared, showing the income expense of the theatre for certain years. I have the general journal for certain years and general ledger for certain years.

Q. Now, who owned the theatre at the time those records were prepared?

A. Well, the theatre was owned up to November 1, 1936, by Edward I. and Marie C. Bigelow. Prior to that time, by John E. Bigelow, William C. Bigelow, Florence Bigelow, and Marion Koerber.

Q. How long have you been auditor for Jackson Park Theatre?

A. Since about 1930.

Q. What are your duties in that connection?

A. I first prepared their income tax returns. That was my first contract. I did so for Edward I. and Marie C. Bigelow up to the time the theatre was sold; and since that time have kept the general ledger for the subsequent owners, and supervised the records, and the bookkeeper
802 looks to me for any matters pertaining to accounting and income tax in connection thereto.

Q. Have you with you the records showing the earnings of the Jackson Park Theatre for the years 1933, 1934, 1935, and 1936?

A. Yes, I have.

Q. What is the nature of those records?

A. For the year 1933, I only have my own report to the owners of the building, which includes a Profit and Loss Statement of the Jackson Park Theatre for the years 1934, 1935, and 1926.

803 I have the general journal which shows the journal entries of the theatre during the time it was owned by

Edward I. and Marie C. Bigelow; and for the last two months in 1936; and for the subsequent years, I have the general journal and general ledger for the owners.

Q. Now, from those books and records, did you compute the net profits of the theatre for the years I have mentioned, 1933 to 1936, inclusive?

A. Yes, I did.

Q. Have you a memorandum or anything here that shows your computation?

A. Yes, I have.

Q. Will you produce that, please?

A. Well, now, I have a memorandum.

Q. Let us mark it for identification.

A. One memorandum which covers one part of the period.

Mr. McConnell: Will you mark these documents Plaintiffs' Exhibits 47 and 48 for identification?

(Said document so marked.)

Q. If you have other documents, we might as well mark them.

I show you documents that have been marked 804 Plaintiffs' Exhibits 47, and 48 for identification. I will ask you to state how you prepared those documents?

Q. Referring to what exhibit?

A. I am referring to Exhibit 47, which was prepared from copies of the income tax returns.

Q. Of what?

A. Of the Jackson Park Theatre, starting with the net profits as shown by those returns, for the theatre, and adjusted with certain adjustments.

Q. Now, what were the net profits?

Mr. Seeley: I object to that, if the Court please.

Mr. McConnell: Let me finish my question.

Mr. Seeley: Sorry.

Mr. McConnell: Q. What were the net profits for the Jackson Park Theatre for the years 1933 to 1936?

Mr. Seeley: I object to that on several grounds, your Honor: In the first place—

Mr. O'Brien: Don't you think we should be heard on that out of the jury's presence?

Mr. Seeley: I think we should.

The Court: Is it your intention to try to finish with
805 this witness tonight?

Mr. McConnell: I thought I could, but apparently not.

Mr. Seeley: I am sure we will want to study the figures.

The Court: The jury may be excused until 10:30. No, make it 10:15 in the morning.

Mr. McConnell: Can you be back in the morning?

The Witness: No, sir, I cannot. I have made previous arrangements which are very important.

The Court: Wait a minute, jurors.

Mr. O'Brien: As far as I am concerned, I am willing to have him finish with this witness and have him tell what he did, subject to a motion to strike any parts the Court may decide is not applicable; and ask that the offer of exhibits be held until we can argue the point,—that the oral testimony be finished.

Mr. McConnell: That would accomplish the purpose.

Mr. Adcock: By identifying the figures which show certain things. I don't think it is proper to ask the contents, except the earnings.

Mr. Seeley: I don't see how I can waive cross examination until we see all of it.

806 Mr. McConnell: There we are.

The Court: I don't know just what we can do about it. You have had all afternoon to put this witness on, but you put this other gentleman on instead.

Where do you have to go, Mr. Witness?

The Witness: A. Tomorrow?

The Court: Yes.

The Witness: I have an annual engagement on Washington's Birthday of each year with a bank, to prepare its income tax returns. I have to work with the president.

The Court: How long will it take?

The Witness: It usually takes until two or three or four in the morning. We worked all day yesterday and we work again on Washington's Birthday because it is a holiday and the bank is closed.

The Court: You can come back Wednesday morning?

The Witness: Yes, I could. What time would I be able to testify in the morning, if it is extremely essential.

The Court: Not later than 10:15.

807 The Witness: Would that help instead of Wednesday?

Mr. McConnell: Yes.

The Witness: Will I be able to testify at that time?

The Court: Yes. Let's all be back at ten o'clock in the morning and see if we can work this out. We will take a recess until ten o'clock.

(Whereupon the further trial of the above entitled case was continued to Tuesday, February 22, 1944, at the hour of ten o'clock a. m.)

808 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

Florence B. Bigelow, *et al*,
vs.
RKO Radio Pictures, Inc., *et al*.

Before Igoe, J., and J.

Tuesday, February 22nd, 1944.
10:00 o'clock A. M.

The Court met pursuant to adjournment.

Present:

Mr. McConnell,
Mr. Korfist;
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

(And thereupon the following proceedings were had out of the presence and hearing of the jury:)

809 Mr. McConnell: There was an objection pending, I think.

Mr. Seeley: Yes. I was going to state an objection to the question, which I think was: What were the profits of the Jackson Park Theatre during the years 1933, '34, '35 and '36?

One objection is that the question calls for a conclusion.

The Court: Keep the jury out for a moment. They want to argue this motion.

Mr. Seeley: (Continuing)—since profits are the result of a calculation of income, expenses and various other things in order to prove profit, there must be a showing of the elements which go into it.

Then I object, too, that oral testimony of that kind is not the best evidence, that the books from which the witness is testifying should be produced.

On a broader ground than that, I object to the plaintiffs introducing any testimony as to the profits of the Theatre before these plaintiffs took it over, because the only conceivable reason for it would be to compare those profits with the profits made after the plaintiffs took it over, and thus to arrive at some kind of an estimate of the damages.

810 The evidence here shows that so far as run and playing positions are concerned, the situation was exactly the same before the plaintiffs took over the Theatre as it was after they took over the Theatre. Now, if that is so, and if there is a difference between the profits before and the profits after, it seems to me obvious that the difference must have been caused by something other than this alleged conspiracy relating to run and clearance.

We know for one thing that shortly after the plaintiffs took over this Theatre, double featuring was introduced, and Mr. Richard Salkin testified that that decreased the business of the Theatre.

Now, I think there has been absolutely no evidence to indicate that double features were introduced by any conspiracy of any kind whatever. The evidence so far is all the other way; and it does not seem to me that any comparison therefore of profits made under single feature and profits made under double feature can possibly be introduced on the foundation that has been laid up to this time.

We also know from the evidence that in 1936 this theatre and others had bank nights, and that that was a great business getter.

811 Certainly the defendants in the alleged conspiracy are not responsible for bank night, and if these figures were to be used in comparing the profits before and after, something would have to be done to take out the effect of bank night. The defendants here are in the motion picture business, not in the bank night business.

Moreover, the evidence here shows that this Theatre uses the films of some ten distributors, ten or eleven, of whom

only five are defendants here, and only five are accused of being in the conspiracy.

Now, clearly some part of the profit or loss of this Theatre must be attributed to the business they did with the other five distributors, and these defendants can not be charged with the responsibility of what any of those others did. There is no evidence that they were responsible for it; and in order to use the profit and loss figures of the Theatre, as in this case, as proof of damages, something will have to be done to eliminate the portion of the business for which the defendants are in no way whatever responsible.

That, I think, covers my objection. In addition to it
812 I want to make the objection I have already made, that any approach to the problem of damages here is improper under the authorities, unless the fundamental basis of the comparison is what did the plaintiffs do working under the alleged conspiracy compared with what it did or could have done, if that can be proven, when it was free of the alleged conspiracy; and whenever we are in the realm where we are attempting to compare simply one period of the alleged conspiracy with another period of the alleged conspiracy, all proof going to damages is incompetent and irrelevant and immaterial.

Mr. Adcock: I did not hear that last.

(Record read.)

Mr. O'Brien: I would add a point, although it may have been stated, I am not certain, that the course is not permissible under the authorities—

Mr. Adcock: I can not hear you.

Mr. O'Brien: Is not permissible under the authorities, to prove profits or earnings which were acquired or which were made or acquired by way of operation under the very system complained of. That is that Robeson case which I cited to your Honor, and there are other cases to the same effect.

813 Mr. McConnell: If the Court please, on the question of the competency of the witness to testify as to what the books and records show, I think that he has testified here that he has books, he has records, and it is customary procedure, in order to shorten the matter, to let an expert, who is in charge of the books, and who has kept the books, and who knows what the books are, to read from the entries which are in the books, and those

entries are in the books. That is a question, of course, and if they want to insist on that, they can have all those books identified before he gives that testimony, but I think that is not the substance of their objection, and I want to meet the substance.

Mr. Seeley says that we can not compare different times in a conspiracy.

Now, he is confusing two things here. He is confusing the kind of a conspiracy where we are conspirators, and are conspiring with him in order to gain some benefit and some price increase for ourselves. In other words, where the basis there would be what we illegally gain in an unlawful conspiracy with his clients.

Now, the allegations in the complaint in this case,
814 and the proof in this case is that we are not parties to a conspiracy; we are the victims of a conspiracy—the allegations of the complaint and all the proof go to the proposition that this conspiracy is directed against us as independent theatres, subsequent run theatres, and the motive as appearing here in the proof is as clear as crystal, it is to improve the take of the Loop runs.

Now, with a conspiracy directed against the plaintiffs in this case, where they are trying to keep our profits down, and decrease them, in order to increase their own—that is the gist of the motive back of it—can they say that because they won't sell pictures to us, except upon terms?

Now, they control the entire product of this industry. The testimony is here. We could not operate our Theatre without their product. We could not profitably operate it. Mr. Coston admitted it in his deposition, and he is one of the defendants, and he ought to know, because he is operating theatres here for years. Can they, by their own wrong against us, deprive us of a basis for our damages?

Now, it must be perfectly apparent that where the
815 reason for that rule which Mr. Seeley refers to does not exist, in other words, where if we were in Loop runs, and if we were in their bed, in their camp, where we were deriving a benefit against some one else from this thing, and this was profit which we were comparing, which we had made in an illegal conspiracy, that is one thing, but they have depressed our earnings, and all the testimony is to that effect.

So much for that; and added to it, of course, is the argument which I gave in my argument on the other point

the other day, that within certain limits there are legal situations in buying runs and in buying clearance, if the clearance is bought in an open, competitive market. The Westway case, a Court of Appeals decision holds that you can buy the franchise, that you can buy the right, that you can buy clearance if you do it in an open and competitive market, where you bid your dollar against the other dollar, and I have been over that argument, and I do not need to go into it here.

Now, the question of what supervenes and what added to it, and what makes this material is this situation. As Mr. Seeley intimated, his contention is that there was bank night in 1937, and that had greatly enhanced the earn-
816 ings of the Theatre. I will concede that. There is no question about it, that bank night did raise the earnings of the Theatre.

Now, no one on earth can in so many dollars and cents say and allocate admission to this or that portion of your entertainment, but we can do something which is fair, which is just, and which arrives at a just result. We can take a base, a five year base, when bank night was not running, immediately preceding that time, and from that take an average profit, an average earning, to be used as a basis, at which that Theatre would earn, without bank night, and without the things that we complain.

Now, true, as Mr. Seeley says, we were in a conspiracy at that time,—I mean he was in a conspiracy at that time. We were not, but we were affected by it at that time. During all that time, from their very statement of it, those earnings must be lower than they normally would be. We are depressed, and the question before your Honor is: Is this a fair basis of comparison?

Now, the basis of this proof is to take your five year period and average it, then show what has happened since 1936.

817 Now, what has happened since 1936? Mr. Seeley says that double features were introduced, and that has nothing to do with it, and that has not anything, any bearing on it, it has no materiality, or anything of the kind; but if these parties are shown to be in a conspiracy, and all the facts and all the evidence brought together and focused together and tied in here, through the inferences which arise from the defendants' acts, and joint action in this, and joint action in that, and the other thing, and

preventing us from bidding—even a legal act done pursuant, and in the foundation and in the framework of that conspiracy, which adds to it, and is a proximate cause in adding to that conspiracy, and the effect on our business, is material.

Now, the proof shows that just after we acquired the Theatre, in one instance, I think, just assuming this, Balaban & Katz introduced double features, and shortly thereafter Warner Bros. introduced double features, and the conjunction of the double features with the conspiracy, and the set-up which they had already set up, and which was operating on our business, that supervening effect was

their effect which they introduced into this situation

818 to protect their Loop runs against the subsequent run

exhibitors. Now, that is the inference, and the only inference that is in this record at the present time, that that was the purpose of it; so I say what happened after 1936, when we got the Theatre, with declining earnings, with all the other factors shown to be the same, the management the same, the operation of the Theatre the same, that that is a fair and reasonable basis, and that the decline or loss in profit, connected up by Mr. Salkin's testimony that it was caused, because after all at the time he could get no clear product at all, that that is reasonable, and that is cogent proof in this case.

Now, any difficulty with this proof, as I see it, arises here from the wrong which is against our business, any difficulty arises from their acts. Are they allowed to assert their acts to defeat a fair and reasonable basis for estimating the damages in this case?

Now, I have gone into it in some length, because I think that I should be perfectly frank and clear in my statements of this situation, and you would know just exactly what my theory of the case is; and that is it, and it seems

to me that nothing that has been cited, as we went

819 over it the other day, and as we have done it here, affects the principle that damages are to be proved by the best evidence of which the cause is susceptible; and added to that is the fact that it is shown in the Eastman Kodak Company case, we are a victim of the conspiracy, not a conspirator.

I submit that this evidence is competent.

Mr. Seeley: If the Court please, it seems to me that Mr. McConnell's argument just begs the question here,

because he says that if there was a conspiracy then it must be that it damaged the plaintiffs' business.

Now, that, your Honor, is exactly what the burden is upon Mr. McConnell here, to prove, and that is exactly what we say—there has not been any proof of it. Somewhere along the line, before Mr. McConnell can get to a point where he can introduce evidence to show the amount of his damages, he has got to prove, and that does not mean to simply infer because there was a conspiracy, he has got to prove that there were damages by introducing some cogent evidence as to what this Theatre would have done if none of these conditions about which he complains existed, and that he has not attempted to do,
820 and I doubt if it can be done. We can not assume damages from the existence of a conspiracy, when all of the books say that there are two things fundamental to the case, which the plaintiffs must prove: One, the existence of the conspiracy, and two, the fact of direct and approximate damage to the plaintiffs as the result of the conspiracy.

The Court: Let me see if I understand what Mr. McConnell is trying to prove.

As I understand it, he is attempting to prove the pace at which this Jackson Park Theatre had operated over a certain number of years, and what the result of that operation was in dollars and cents. Then he takes another theatre, the Maryland, is that the name of it?

Mr. McConnell: Yes, your Honor.

The Court: Which he says is one that is similarly situated to the Jackson Park Theatre, so far as the neighborhood, the equipment, and those things that have to do with the operation of the Theatre, are concerned. He says that during the period in question the Maryland did a certain business, and made a certain profit; and his contention, as I understand it, is that his theatre is
821 similarly situated, in practically every respect the same, and which if it had been permitted to operate, as the Maryland Theatre did operate, it would have resulted in the same sort of a profitable venture as that which was encountered by the Maryland Theatre. Is that your theory?

Mr. McConnell: Well, that is one theory. I think we are beyond that part in the evidence.

The Court: That is one of your theories?

Mr. McConnell: Yes.

The Court: That has to do with that phase here?

Mr. McConnell: Yes.

Mr. Seeley: No, no. We are past that.

Mr. McConnell: That evidence is in. This has to do with this situation.

The Court: Well, this has to do with the fact that you operated it at a different basis than the Maryland operated it, doesn't it?

Mr. McConnell: No. This has to do with the basis upon which we operated, an average period, showing a similarity of earnings, and an average basis taken. Then we say after that that in the year 1937 we had a decline in earnings, that in the year 1936 we had a decline in earnings, in the year 1938 we had a decline in earnings, 1939 we had a decline in earnings, and 1940, a steadily
822 decreasing decline in earnings. Now, this theory of damages is offered, that the conspiracy acting against our business after 1936, regardless of the question of whether we would have gotten the Maryland run in our run, operating against us, this conspiracy has resulted in declining earnings.

The Court: Outside of the other situation, even business that you had back in 1936 and 1937, kept on declining?

Mr. McConnell: That is right.

The Court: I didn't understand that before. I can understand it now.

Mr. O'Brien: I would like to amplify somewhat what Mr. Seeley first said in his objection, and see if I can not make it more clear.

Mr. McConnell, in his complaint, in the argument on the pleadings, and in his opening statement to the jury, said that there was one conspiracy, that it happened before the plaintiffs got the Theatre, that it happened—the inference from the evidence was that the events, this release system which they object to, was in effect about 1927; but indeed Mr. McConnell alleges in the complaint that prior to the inception of the conspiracy, only the
823 Tivoli Theatre and the Avalon Theatre played ahead of the Jackson Park.

Now, what does that mean? That fixes the time, because the Avalon was not built until 1927, and if the Avalon, before the conspiracy, played it, and the Tivoli alone played ahead of them, then the conspiracy must have

occurred somewhat after the time that the Maryland—I mean that the Avalon was built, in 1927.

Now, Mr. Coston's deposition was read, and he said that the release system, or the position of the theatres settled down to this release system description, along about the time of sound, which again was 1927. You will remember the picture, "The Jazz Singer", appeared in 1926. I mean that first sound picture; and then came sound in 1927, and it took a year and a half or two to equip the theatres with the sound machines; and that is when C release and the formal description of this thing occurred.

All right. So as far back as 1927 or 1928, if there be any, if these facts be such as, coupled with intention and activity on the part of the defendants, would show any conspiracy to be at a later time, but if they do, then
824 it occurred at about that time.

Now, Mr. Seeley said that once you prove the conspiracy, the next thing in order before you attempt to put in any proof of damages as to what your damages are, is that that conspiracy had an impact, it hit, it didn't just exist, it hit, and it hurt, and it injured either the plaintiffs or their property, the Jackson Park.

Well, where did it hit? They operated under the release system from that time all the way down to 1936. There is not a single piece of objective testimony or evidence that it had the slightest effect on them, or indeed that their theatre, operating where it operated, in first week, did not in fact make more money than the theatres in C week. Not a word; nothing to show that that conspiracy, that release system, had any effect on his Theatre. But it now comes down to 1937. During the years 1935 and 1936, there was bank night a good part of 1935, starting in May. Then bank night ceased right after Christmas in 1937. They bought the property about a month or two before, and at the end of 1936, and during 1937, down went the earnings. All right.

That is an impact of something isn't it? But was
825 it the impact of a release system, or of a refusal to permit them to play in C week? That is what their complaint is about. Since they were able, from 1927 to 1936, to run and make these profits they are talking about, and since nothing else intervened but the loss of bank night and the double featuring, wherein is anything which could have happened at that time due to this release sys-

tem, to the fact that they were precluded from playing in C week, facts which existed all the way back to 1927. So I say they do not prove injury to their property due to or on account of any conspiracy. Rather, the evidence affirmatively shows it to be due to the loss of bank night, the cessation of bank night, and due to double featuring, which, if you please, affected our theatres, our Shore, which played day and date with them, our Hamilton, which plays behind them, our Frolic and one other theatre in the same position with them, affected them just as much as it did his situation; and the law is, as your Honor knows, where the inference—you can draw two inferences, one of right, and one of wrong. You can not select the wrong one and conclude there was a conspiracy in respect to double featuring.

826 As a matter of fact, the evidence further shows in respect of our own houses, that we did not want double features, that we resisted it and tried to go along with a single feature policy, until the public demand forced it; and you want to remember, your Honor, that the cases which hold that the distributors have no control over whether the exhibitor is to get and exhibit two pictures at one time, they try to control them, and the Court said it can not be done, so they could not stop exhibitors from buying; and as a matter of fact, some eighty exhibitors, the evidence shows, started the practice before B. & K. ever commenced. So I say he can not. When you pick a base in a conspiracy situation you have got to pick up the point of the impact of injury, which is due to the conspiracy, and take your base before that. Well, he hasn't got any such basic impact.

Now, there is one other thing. Mr. Seeley mentioned it, and your Honor mention it at the end of the ruling on one of Mr. McConnell's offers of proof.

You said, well, if this is the only proof of damage he has got, maybe I should reverse myself. Well, why? Why?

Because your Honor seemed to have the concept that
827 if the conspiracy is proved, where there is a wrong, there is a remedy; and if the conspiracy is proved, it necessarily follows that it works an injury to their property, and that there are provable damages, and that therefore he must have some proof. That is not the law. That is not the proper concept of it. The fact is, in a great multitude of the cases where this, where conspiracy has been

proved, there is no proper base, and no proof of damages can be made. The result is that the Congress enacted the Clayton Act, or the injunctive provisions of it, because in so many of those cases you could not establish the fact of injury to the property, and therefore you never could prove damages before a court or jury, under any of the rules of law; but if there was a conspiracy there should be some relief, and consequently the provisions by which they could have an injunction, and both damages and injunction are sought here.

I do not think for a minute that the evidence shows any conspiracy, and Mr. McConnell's statement that there was, and that he was not within it, is ridiculous, because you know that the evidence shows he took clearance over other houses; he took clearance over the Hamilton; the little time the Hamilton played, it hurt his profit; he
828 had it moved back. Do you think he would have made the earnings that he made if the Hamilton, the little Hamilton, was in competition with him, if it had played in the same position right along, and where would he be if some of the other houses such as the Shore, which we played day and date with him, had played ahead of him, in what he calls a free and untrammeled market? I say that whatever his earnings may have been, he earned them under this system, and it is not only the Robeson case, there are other cases which will be cited to you, to show that he can not get relief. I am not talking about estoppel, to bring his suit; that is another point. But that he can not measure, he can not use as a basis in the measurement of damage what his Theatre earned whole getting the benefits of that socalled allegedly illegal system.

829 Mr. McConnell: If the Court please, that last statement focuses this whole thing. As I pointed out in the West Way case, clearance can be bought in a fair and open market. We could bid our dollars for clearance. Now, on the basis of this evidence, could any reasonable person view the Jackson Park Theatre as entering into a conspiracy because they had to buy product from these distributors who tendered it to them only on certain terms? In other words, this thing was acting and it is so alleged, in spite of what Mr. O'Brien said, it is so alleged as being directed against us.

Now, we cannot be conspirators in a conspiracy which

is directed against us. That is just a contradiction in terms. It cannot be so.

Now, what I am saying is this, that the case he is talking about is the case of this kind, where A, B, and C enter into a conspiracy and say, "We will up a price" and they sell their product at a set price between them, and then A drops out of the conspiracy and then he tries to use the conspiracy with the upped price as a basis for his damage.

Now that is the kind of a case that Mr. O'Brien is
830 talking about, and it is not this case, because we never at any time entered into a conspiracy. We are complaining that the whole thing is a conspiracy directed against us. So that is the distinguishing feature between the case he tries to cite, or cites here, and our situation.

Now, he says that the double feature thing affects him, and so forth. Maybe it does. There isn't any proof of that in the record as it stands today. The proof in the record is that Balaban & Katz introduced it and then Warner Bros. introduced it, and my point is this,—once you show a conspiracy, once you show a concert of action directed to a certain end, then a legal act which done alone could be justified in law, if it in any way adds to the impact together with an underlying conspiracy effective against the business against which it is directed, then the impact occurs. And he is talking about impact,—we had a terrific impact, and I don't know how we can show the impact, if the Court please, without so proving it. He says we have not shown the impact. The most persuasive evidence of the impact is the effect on our business,
831 which is shown by these records. The impact occurred in 1936, and I submit we should be allowed to show it.

The Court: Let me see now if I understand it. I understand the reason you want to put this evidence in is because you allege that, as a result of this conspiracy which you have attempted to prove here, the profits arising from your business declined from year to year.

Mr. McConnell: That is right. We have two items of proof in our complaint.

The Court: Well, that is this item, isn't it?

Mr. McConnell: That is this item.

The Court: The decline of profits over the course of years because of the existence of this alleged conspiracy.

Mr. McConnell: So we allege in the complaint.

The Court: That is different than the other theory, which has to do with the—

Mr. McConnell: That is right, two theories.

The Court: Which has to do with the Maryland Theatre.

The Court: Against that they raise the proposition that, among other things, there are certain elements
832 which may account for the decline in profits.

Mr. McConnell: That is an element of proof.

The Court: One of those elements has to do with Bank Night, and one other situation they mentioned, but, as I see it, those are matters which they will have to develop upon cross-examination of this witness when he goes on the stand, upon this line of testimony.

Therefore the objection will be overruled and the witness may proceed to testify along the lines he started.

Bring in the jury.

Mr. Seeley: How about the objection which Mr. McConnell said is good, that if we wanted him to, he would have to bring in the underlying records?

Mr. McConnell: We will have them here.

Mr. Seeley: I think they should be identified.

The Court: Bring in the jury. You have the records here?

Mr. McConnell: We do have the records.

The Court: And they are available to counsel on the other side?

Mr. McConnell: Yes, sir.

The Court: For scrutiny and examination?

Mr. McConnell: They are right here.

833 A. B. BUTLER, a witness called on behalf of plaintiffs, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. McConnell (resumed).

Q. You have been sworn, Mr. Butler?

A. Yes.

The Court: Butler—is that the name?

Mr. McConnell: Did you give your name for the record?

The Witness: Yes, I did.

The Court: He gave his name and address. He lives on Woodlawn Avenue and is an accountant.

Mr. McConnell: Q. Mr. Butler, have you with you any of the books and records of the Jackson Park Theatre?

The Witness: Yes, I have.

Q. What books have you got?

A. I have the general ledger and general journal of the Jackson Park Building Company, which began November 1st, 1936, and then I have the general journals for the years '33, '34, '35 and '36, during the time that the 834 theatre was owned by Edward I. and Marie C. Bloom.

Q. Will you produce your general ledger?

A. Yes, this is the general ledger of the present owners.

Q. May I have it?

A. Here. (Producing book).

Mr. McConnell: Will you mark this with the next exhibit number?

(Book marked Plaintiffs' Exhibit 50 for identification).

Q. Will you examine this book and state who made the entries in it, if you know?

A. I made practically all of the entries in it myself. Those that were not made by me were made under my supervision in my office, except for the early part of the period, during which the entries were made by Mrs. Wren, now deceased, who was employed by the owners of the theatre.

Q. Would you say the book was kept under your supervision?

A. Yes.

Q. And from what data was the book compiled?

A. Pardon me?

Q. From what data were the entries made?

A. Well, the entries were compiled from all original records of the theatre, but the direct postings to the general ledger were made from a general journal which I have in my possession.

Q. And was that book always in your possession?

A. That book has been in my possession since the death of Mrs. Wren.

Q. And that was when?

A. Well, I don't recall the exact date, but it was I think about the end of 1937.

Mr. McConnell: Let me ask counsel, do you want me to introduce all these records in evidence or is it sufficient for your purposes if they are here for your cross-examination?

Mr. Seeley: I should like to have them introduced in evidence.

Mr. O'Brien: The end of what year was that?

The Witness: I am not sure of the date. I see that her handwriting is up through that year.

Mr. McConnell: If the Court please, I think I have a right to ask for the discretion of your Honor in this situation. I don't know why I should have to clutter this record with all these books, when the ordinary and customary accepted procedure is to produce the books for cross-
836 examination of counsel and let the witness testify as to what he draws from it.

The Court: He has made a summary of the book?

Mr. McConnell: He has made a summary.

The Court: That will be sufficient, if you have the books here and make them available for examination by the gentlemen on the other side.

Mr. McConnell: You are willing to submit these books and make them available for examination of any one on the other side?

The Witness: Yes.

Mr. O'Brien: That is perfectly agreeable to my client, your Honor.

Mr. McConnell: Will you produce the documents marked for identification here yesterday?

The Witness: These are the ones here (producing documents).

Mr. McConnell: Q. All right, now will you state from what sources you obtained the data which appears on those documents?

Mr. Seeley: Will you refer to them by exhibit number?

Mr. McConnell: Yes.

The Witness: I have before me Exhibits 47 and 48.
837 Exhibit 47 supports—is detail supporting Exhibit 48.

The figures shown on Exhibit 48 were prepared by me from previous reports that I had made, which support income tax returns filed for the Jackson Park Theatre, which returns were prepared by me from the books of the Jackson Park Theatre.

Mr. McConnell: Q. All right, now before you go further with that, I show you a document which is marked for identification Plaintiffs' Exhibit 49, and ask you to state who prepared that?

A. I prepared this.

Q. From what source did you prepare that?
A. From the books of the Jackson Park Theatre.
Q. Can you state whether or not that is a true and accurate compiliation—
A. Yes, it is.
Q. —of what the books show?
A. It is.
Mr. McConnell: I offer that document in evidence as Plaintiffs' Exhibit 49.
Mr. Seeley: Well, I make to it the same objections made to the previous question.
The Court: Yes.
838 Mr. Seeley: So far as they are applicable.
Mr. Adcock: May I ask the witness a question or two?

Preliminary Cross-Examination by Mr. Adcock.

Q. What period does this report cover?
A. That covers the calendar years 1936 to 1942, inclusive, as is shown on the face of the cover. However, the year 1936 is broken down into two periods, the first being from November 1 to December 31, 1936, and the other from January 1 to October 31, 1936.
Q. Well, are the results here in this exhibit, are they taken from your income tax returns?
A. I believe that was—I can tell by looking at it, but I believe those sheets are actual copies of the original attachments to the income tax returns as filed with the federal government.
Mr. McConnell: Will you state who prepared them?
Mr. Adcock: I think he has already testified that he prepared the income tax returns.
The Witness: These schedules, the work sheets for these schedules were prepared by myself from the
839 books of Jackson Park Theatre.
Mr. Adcock: Q. And what books?
A. From the books of the Jackson Park Theatre.
Q. That is what books?
A. From the general ledger.
Q. Your general ledger?
A. Yes.
Q. And that covers the years 1936 to 1942,—
A. Inclusive.

Q. That period?

A. Yes.

Q. And do you have a general ledger for the year previous?

A. The general ledger for the period prior to November 1st, 1936, is not in my possession, but I have, however, the general journal from which the postings were made to the general ledger, and I also have financial statements that I prepared myself from the old general ledger.

Q. Then, did you have a general ledger for the years prior to 1936?

A. That is the general ledger I just referred to.

Q. You have that for each—it covers all those years?

A. No. The general ledger prior to November 1st, 1936, I do not have in my possession.

840 Mr. O'Brien: Well, who has it?

The Witness: I think the general ledger has been destroyed. That was the property of Edward I. and Marie C. Bloom and all of the income tax returns have been examinad and approved up through the year 1941, and most of those records were destroyed.

Mr. Adcock: What books were destroyed and that you were unable to find? You reported to Mr. Upton, did you not, that the books for a certain time had been destroyed covering a certain period, is that right?

A. I believe so, as I recall. I know a lot of them have been destroyed.

Q. Then will you just state what were destroyed?

A. Well, I don't—I could not name all of the records that have been destroyed, but the general ledger I don't have and whether it has been destroyed or where it is, I don't know.

Q. Well, what basis did you have for stating to Mr. Upton in August last—

Mr. McConnell: I object.

Q. (Continuing)—that the books had been destroyed for a certain time?

Mr. McConnell: That is not proper cross-examina-
841 tion at this time.

Mr. Adcock: Wait just a minute,—the books had been destroyed for a certain time?

The Court: His objection is sustained.

Mr. Adcock: On the ground it does not cover this particular period?

The Court: Yes,—the only ground upon which I sustained.

Mr. Adcock: All right. I think that is a good objection.

The Court: The journal for the period in question you have in your possession?

The Witness: I have, yes, sir.

The Court: And that is available for counsel's examination?

The Witness: Yes, sir, I have it here.

The Court: That covers the period that was covered by the ledger which has been destroyed, is that right?

The Witness: Well, that covers the years 1933, '34, '35 and '36, from which we have made comparisons.

The Court: But the ledger for that period is not available?

842 The Witness: That is right.

Mr. McConnell: The document is offered, if the Court please, and no ruling yet.

The Court: It may be admitted, subject to the objections that have been made.

Mr. O'Brien: I suppose without repetition we may have a standing objection predicated on the argument?

The Court: Yes, sir.

(Said document, so received in evidence, was marked PLAINTIFFS' EXHIBIT 49 and is in words and figures as follows:)

843 *Direct Examination (Resumed) by Mr. McConnell.*

Q. Now, will you state from what your tabulations are made on Plaintiff's Exhibits 47 and 48?

A. I did state that. They were summarized from my own reports and copies of income tax returns. Exhibit 49 contains actual copies of original schedules that were attached to income tax returns of the Jackson Park Theatre.

Q. Now, is the data on Plaintiffs' Exhibits 47 and 48 taken from Plaintiffs' Exhibit 49?

A. The figures are the same as other reports which I had prepared—yes, I can answer the question yes to that, because they are the same as those exhibits.

Mr. Adcock: When you say "those exhibits,"—

The Witness: The exhibits contained. I mean the schedules contained in Exhibit 49.

Mr. McConnell: All right. We offer in evidence PLAINTIFFS' EXHIBIT 47, the exhibits marked for identification Plaintiffs' Exhibits 47 and 48.

844 *Preliminary Cross-Examination by Mr. Seeley.*

Q. Mr. Butler, on Plaintiffs' Exhibit 48, I see a column headed "Jackson Park." Now are the figures under that column taken from the schedules which are in Exhibit 49?

A. Yes, sir.

Q. And, next to that, I see a column entitled "Maryland." From what source did you take those figures?

A. I took them from a schedule in Mr. McConnell's possession at that time, which I think has been exhibited in court.

Q. Is it marked with a number?

Mr. McConnell: Yes, 49,—I guess we have two 49's.

Mr. Seeley: No, this is 44.

Q. Will you look at Plaintiffs' Exhibit 44, and see if that is the schedule to which you refer?

The Witness: A. Yes, this is the one.

Q. Then I see a third column, entitled, "Excess Maryland Over Jackson Park." That is not taken from any other document, is it? That is your own calculation?

845 A. That is right. That is the difference between those two columns that you referred to.

Q. On Plaintiffs' Exhibit 48, the top item is "Net Profits for Income Tax Returns." Is that some corresponding figures which we could find in Plaintiffs' Exhibit 49?

A. Yes, yes, all those figures.

Q. Just for example take the year 1938 and point out to me the page and place where we can find the corresponding figures.

A. Well, the year 1938 shows, according to the schedule contained in Exhibit 49, the net profit of the theatre for that year, of $23,812.96.

Q. And that is the same?

A. That is the same figure that is shown on the first line of '48.

Q. I would find all the other figures in the other years?

A. To correspond in the same manner, yes.

Q. Now the next line appears to be "Add Increased

Admissions to Equal Admissions of the Maryland Theatre." What does that mean?

A. Well, that means, those figures on that line represent the excess admissions in dollars and cents of
846 the Maryland Theatre over the admissions of the Jackson Park Theatre for each year.

Q. Well, then this exhibit 48 is not a statement which relates only to the business done at the Jackson Park, but is sort of a combination of what was done at the Jackson Park and what was done at the Maryland, is that right?

A. That is right to that extent. It purports to show, and does show, the difference between actual net income of the Jackson Park Theatre as reflected by the income tax returns and what the net profit of the Jackson Park Theatre would have been had the Jackson Park Theatre had the same admissions, in dollars and cents, as the Maryland, and had the same cost of film rental as the Maryland Theatre.

Q. Now, what is your basis for indulging in the assumption that under any circumstances the Jackson Park Theatre may have had the same admissions?

A. Well, I have no basis. I did that—I made that comparison at instructions of Mr. McConnell.

Q. And he told the plan, the theory upon which to make this, is that right?

847 A. That is right.

Q. And, in the same way, is it true in the next column, where you refer to the film rental of the Maryland, that you were simply following the formula suggested to you by Mr. McConnell?

A. Yes, I just made those two comparisons, computed them myself based on the records which have been exhibited in court.

Mr. Adcock: Based upon what?

The Witness: Based upon the records which have been exhibited in court pertaining to the two theatres.

Mr. Adcock: I move to strike "the records exhibited in court."

Mr. O'Brien: He means exhibits, I think.

The Witness: I meant to identify the records that we are dealing with.

The Court: The exhibits you are talking about?

The Witness: The exhibits, yes.

Mr. Adcock: You mean from certain things that were given to you by Mr. McConnell?

The Witness: I mean the exhibits that we now have before us; the comparisons were made only from the exhibits that we are now handling in court right
848 here.

Mr. Adcock: You obtained those from Mr. McConnell, did you, and he told you they were exhibits, did he?

The Witness: I obtained the Maryland statement from Mr. McConnell, yes.

The Court: Well, that statement is in evidence, isn't it?

Mr. McConnell: Yes.

The Court: This is the statement or exhibit you are talking about?

The Witness: That is right.

Mr. Seeley: Q. Now, going down to another item here, I see a reference to the average net profit for the four years prior to July 28, 1937. What is the source of the figures in that?

The Witness: A. Well, that average profit of $44,000 a year is based on the actual net profit of the Jackson Park Theatre.

Mr. Seeley: I don't think you understand what my question is.

Mr. McConnell: Let him answer it now. You asked it.

Mr. Seeley: Well, it is obvious it is not re-
849 sponsive.

The Court: Well, if he does not understand the question, let him put the question in a manner Mr. Seeley thinks he will understand.

Mr. Seeley: Q. What are the books and records from which you obtained the figures reflected in this item about the profits prior to 1937?

A. From my own notes of financial reports which I had rendered and from the general journal of the owners of the theatre.

Q. And have those documents yet been produced and identified here in the court room?

A. I believe not.

Q. I also see that that goes on and says "Eliminating estimated Bank Night receipts." Did you, in order to arrive at those figures, eliminate estimated Bank Night receipts?

A. Yes. I did not take into consideration what period it would be—the excess earnings of the theatre during the year 1936, which might be attributed to Bank Night operations.

Q. How did you go about it, to decide just what portion?

A. Well, I took the years 1933, '34, and '35. The
850 year 1933 showed a net profit of approximately forty—

Mr. Seeley: Wait. You can go along without giving the figures, can't you?

The Witness: I don't know. If you will ask it again, I will try.

Mr. Seeley: Q. By what method did you eliminate what you thought to be the excess Bank Night receipts? How did you determine that amount?

A. Based on the three prior years' operations.

Q. Let me see if I understand that. Do you mean you averaged the three prior years' operations and then assumed that—

A. I took the year 1934 and the year 1935 and I based my average on those two years, the two years prior to 1936, which was considerably in excess of the years 1934 and '35.

Q. Does that mean that you used, for the 1936 receipts, a figure equal to the average of the 1934 and 1935 receipts?

A. No. That means that I used a figure representing 1936 greatly less that what the actual 1936 net income was.

Q. And how did you arrive at that figure?

851 A. As I said, by taking the 1934 and 1935 average net income, the two years being equal, as a matter of fact.

Q. And doing what with them?

A. And assuming that the average profits for 1936 would have been the same, that is that the profits for 1936 would have been the same as in 1934 and 1935 had not the excess—had no Bank Night operations entered into the operation of the theatre.

Q. Well, perhaps I was not clear before. It is true then, isn't it, that in this compilation you have used, as the 1936 profits, the average profits which were made in 1934 and 1935?

A. Yes, I believe you can say that.

Q. Well, is it true?

A. Yes, that is true.

Q. Is that the way you did it?

A. That is right. I—it is hard to tell you without explaining the figures, but the average—or rather I assumed this average which I used in making my comparison to be the same average as in the years 1934 and 1935.

Q. Have you your work sheets on which you worked 852 that out?

A. I had at that time a schedule before me of the net profits for those years, but I also have reports which would show the same figures.

Q. That I understand, but, in order to make this adjustment about Bank Night, you had to go through some mathematical process, did you not?

A. Well, it was very simple, the process. I assumed that the profits for 1936 would have been approximately the same as it was for 1934 and 1935, 1934 and 1935 having the same profits. And, as a matter of fact, the profits for 1936 was about $9,000 in excess of either of the years 1934 or 1935, on which I based my average.

Q. And you took that off?

A. Yes.

Mr. Seeley: Now, if the Court please, maybe other counsel want to cross-examine about this before objections are stated.

Mr. Adcock: I would like to ask a question. I would like to ask about the books that were destroyed.

Mr. McConnell: Well, I haven't finished with the 853 witness yet.

Mr. Adcock: Oh, I beg pardon. Well, weren't you offering these in evidence?

The Court: Mr. Seeley thought you might want to examine along the line that he has just been examining.

Mr. Adcock: Well, I will want to ask one question, your Honor.

Preliminary Cross-Examination by Mr. Adcock.

Q. Why did you use the figures for the year 1935 in getting your average?

A. I used the figures for 1934 and 1935.

Q. Yes, but why did you use 1935?

A. Well, to arrive at a period prior to 1936; I mean to consider it.

Q. Well, prior to Bank Nights was your idea, wasn't it?

A. Well, my idea was prior to the period that we are making comparison with, which is July 28, 1937 to July 28, 1942.

Q. In this calculation your object was to eliminate those earnings which were due to Bank Night, wasn't 854 it?

Q. Well, it did not seem fair to base the comparison on the year that had an unusual situation such as Bank Night.

Q. And therefore you desired to eliminate all calculations as to any earnings during the period of Bank Night; is that right?

A. Well, I was only trying to arrive at what seemed to be a fair basis.

Mr. O'Brien: Well, I think he can answer that yes or no.

The Court: In arriving at your figures you wanted to eliminate the element of Bank Night?

The Witness: I wanted to eliminate anything that would distort a fair basis of comparison.

Mr. Adcock: Q. All right, what other thing did you have in mind besides Bank Night that might distort?

A. I did not have anything else in mind.

Q. Then you desired to eliminate—

The Court: Now we have got down to the answer that you wanted?

Mr. Adcock: All right. Then why did you take—do you know when they started to use Bank Night?

855 The Witness: Well, I think it was about the first part of 1936, but I am not sure.

Mr. Adcock: Q. You don't know that the record here shows that it was May 27th or 29th, 1935?

A. No, I dont know that.

Q. Then, don't you think, in making your calculations, it would have been fair to have eliminated figures that you have here as to profits for the year 1935?

A. I don't know whether it would or not.

Q. Well, if part of the profits for the year 1935 was due

to the use of Bank Night, don't you thing that that should be eliminated?

The Witness: Well, were part of the profits due to that?

Mr. Adcock: Yes.

Mr. McConnell: Well, I don't know—I don't think counsel has a right to testify to that.

Mr. O'Brien: The records are in evidence.

Mr. McConnell: There is no showing as to what Bank Night was.

Mr. O'Brien: He has a right to ask him to assume; he has already said he considered it fair where they did exhibit in 1936.

856 Mr. Adcock: He eliminated it for the year 1936.

The Witness: I don't know that the excess over $44,000 was all due to Bank Night. For that matter, perhaps the excess over $44,000, I mean perhaps the Bank Night benefit to earnings in 1936 was only $3000, for all I know, instead of $9000.

Mr. Adcock: Q. But your object was to eliminate something that might distort—

The Witness: My object was to go by the—

Mr. Adcock: Well, will you wait a minute while I ask the question?

The Witness: Yes.

Mr. Adcock: Q. Your object here was to eliminate the effect of Bank Night for the year 1936, isn't that true?

A. Not necessarily. My object was to take the records as they appeared in comparison, one year with another, and one year was completely out of line with the other year, and that was the year that I knew Bank Night was operating; so I just arbitrarily took the average of those years which were consistent in earnings and eliminated the excess in 1936 over the average of the other years.

857 Q. And 1935 was out of line with 1934 to the extent of about $8000, wasn't it,—a little more?

A. I think it is less than—three or four hundred dollars as I recall.

Mr. McConnell: You can refer to your records.

Mr. Adcock: Look at your records.

Mr. Seeley: Perhaps I have the one he wants.

Mr. McConnell: That is the one he wants.

The Witness: That is not the one. You have a list, Mr. McConnell, of the net profits for certain years.

May I answer that question now?

Mr. Adcock: Q. What was the difference—I don't want you to give the amount—but what was the difference between the admissions?

The Witness: The difference between 1934 and '35?

Mr. Adcock: Yes.

The Witness: 1934 and '35, approximately $400.

Q. What was the difference in receipts, gross admissions?

A. Approximately $8000.

Q. And the difference between 1933 and 1934 was only $3000, wasn't it?

A. In gross receipts, yes.

Mr. Adcock: Gross receipts. I guess that is all I have.

858 Mr. O'Brien: I have no questions. I have some objections to these papers when you get through.

Mr. Seeley: I have—I think without re-stating them I can say I have, but since this reference to the plaintiffs' damages I wish to make an additional objection to all the objections which have been previously made, both in comparison to the Maryland and to the years prior to 1937 and 1936.

Then also I want to call your Honor's attention, without reading them, if I may, to the legend which is used in two places on there. That is here and here (indicating to the Court). Now, those legends are not an accountant's description of what those figures mean; they are an accountant's assertion, by this witness, of what he thinks, or somebody thinks ought to be recovered in a lawsuit.

Mr. McConnell: Can I see that legend?

The Witness: I can answer that question.

The Court: All right. Let Mr. McConnell take care of his side of the game for a minute.

Mr. McConnell: I think Mr. Seeley's contention is right, that I should not offer—I did not realize that was there. I don't want to confuse anybody on that. That can be stricken out or erased.

859 Mr. Seeley: Well, there should be substituted a legend which tells what the figure is.

The Court: Are you agreeable to that?

Mr. Seeley: That is the difference between something and something else and the sum of something and something else.

Mr. McConnell: The difference. Well, he is objecting to the first two words,—aren't you?

Mr. Seeley: Well, the first four words.

Mr. McConnell: Well, you want to take out the first four words?

Mr. Seeley: Yes, I think the first four words should be erased.

Mr. Adcock: I suggest that it be re-done, because we can not read the figures because of the language on the exhibit with any degree of certainty.

Mr. McConnell: I am perfectly willing to have the exhibit typed, if counsel wants it that way, and take off those legends.

With those amendments I offer it in evidence, with the understanding that the exhibit will be so amended.

Mr. Seeley: I did forget one other objection. For the period before 1936 the underlying exhibits have been identified and produced for inspection.

860 Mr. O'Brien: The reason I had no objection to the use of compilations made by the witness from complicated books is that that the Illinois cases say that may be done, but it must be confined strictly to arithmetical calculations from the books themselves. Now, my further objection to those documents, beyond what Mr. Seeley has mentioned and beyond the standing objection which I have and that we all have, is that the documents purport to do more than that and go into extraneous matters other than the books of this company themselves and include a number of surmises and assumptions and conjecture which are in no way limited to mere arithmetical calculations. For that reason I object to them.

The Court: All right. Now Mr. Seeley objects that certain of the underlying records are not available for cross-examination.

Mr. O'Brien: Those prior to 1936.

The Court: Which records are missing,—according to your statement, Mr. Seeley?

Mr. Seeley: Well, whatever records he has for the years before 1936. I understand he said something that he made for income tax purposes.

The Court: I understood he had the journal.

861 The Witness: Yes, I have.

The Court: He does not have the ledger. The journal was a book of original entry.

The Witness: Yes, and I have those.

The Court: Well, what other books do you suggest are missing?

Mr. Seeley: I don't know. I just suggest that those he used ought to be identified.

The Court: Well now I understand they are here and available for your inspection, including the journal for the years you have just mentioned.

Mr. McConnell: That is correct.

Mr. Seeley: Can we give them identifying numbers, Mr. McConnell?

Mr. McConnell: Yes, Mr. Seeley. I will ask that this book be marked for identification Plaintiffs' Exhibit 51.

(Book so marked.)

And this book be marked Plaintiffs' Exhibit 52.

(Book so marked.)

The Court: I understand further that the legends to which Mr. Seeley objects, upon one of these exhibits, will be eliminated.

Mr. McConnell: That is correct, your Honor.

The Court: You will prepare new exhibits in type-
862 written form and conform to Mr. Adcock's suggestion to make them more legible.

Mr. McConnell: I will do that also.

The Court: Well, when you have complied with all those suggestions the exhibits may be admitted. Which are the numbers?

Mr. McConnell: Plaintiffs' 47 and Plaintiffs' 48.

The Court: Now, have you numbered these other books which Mr. Seeley inquired about?

Mr. McConnell: Yes, your Honor, they are all num-
bered.

863 Mr. McConnell: Q. Now, I show you a document which has been admitted in evidence as Plaintiffs' Exhibit 48, and ask you to read to the jury the net profits of Jackson Park Theatre in the years which are shown on that exhibit.

A. For each year?

Q. For each year.

A. The net profit for income tax returns of Jackson Park Theatre for the period July 28, 1937 to December 31, 1937, the beginning of this five-year period, was $13,215.32. For 1938, the entire year of 1938, was $23,812.96;

for the year 1939, $20,140.60; for 1940, $13,524.36; for 1941, $13,150.05.

For the period January 1, 1942 to July 27, 1942, the net profit was $10,496.72; making a grand total for the five-year period of $94,340.01.

Q. Now, what figure did you have for the average base profit, for the period of 1936,—for the period you mentioned?

A. $44,000.00 per year, or a total for the five-year period of $220,000.00.

Q. That was the period to what date?

A. To July 28, 1937.

Q. All right. Now, comparing the average profit
864 with the actual profit in each of the years mentioned, state the difference to the jury.

A. By years?

Q. Yes.

A. For the prorated period of July 28, 1937 to December 31, 1937, the difference was $5,711.68. For the full year of 1938, the difference was $60,187.04; for 1939, $23,859.46; 1940, $30,475.63; 1941, $30,849.45; and for the prorated period of January 1, 1942 to July 27, 1942, $14,576.28.

Q. What is the total difference?

A. Making a grand total difference for the five-year period of $125,659.99.

Q. Now, I show you a document which is admitted in evidence here as Plaintiffs' Exhibit 47, and ask you to state what the admissions of the Jackson Park were in the year 1937.

A. For the prorated period of July 28, 1937 to December 31, 1937, the admissions were $44,038.34.

Q. What were they in the Maryland?

A. $63,294.55.

Q. What is the difference?

A. $19,256.21.

Q. For the year 1938, now, of the Jackson Park.

A. Jackson Park admissions were $92,934.83. The
865 Maryland, $124,339.09, a difference of $31,404.26.

Q. In whose favor?

A. In favor of Maryland.

Q. And for 1939?

A. Jackson Park admissions were $88,490.81, as compared with $130,194.54 for the Maryland; the difference

being $41,703.73 that the Maryland receipts exceeded Jackson Park. 1940, Jackson Park, $83,772.77; for the Maryland, $127,986.01; a difference of $44,213.24.

1941, Jackson Park, $89,778.40; Maryland, $120,605.81; a difference of $30,827.41.

For the prorated period January 1, 1942, to July 27, 1942, Jackson Park, 54,360.80; Maryland, $74,476.48; a difference of $20,115.68.

Q. What were the total receipts?

A. The receipts for the five-year period for Jackson Park, $453,375.95 as compared to Maryland, $640,896.48, a difference of $187,520.53.

Q. In whose favor?

A. Maryland.

Q. Did you make a comparison of film rental?

A. I did.

Q. What are those figures?

A. The film rental of Jackson Park for the prorated period of July 28, 1937 to December 31, 1937,
866 $10,597.19, as compared with Maryland, $18,717.54, the film rental of the Maryland exceeding Jackson Park, $8,120.35. Shall I read the years?

Q. The years, yes.

A. 1938, Jackson Park, $26,299.94; Maryland, $41,478.93; a difference of $15,178.99.

1939, Jackson Park, $27,134.10; Maryland, $40,420.97; a difference of $13,286.87.

1940, Jackson Park, $27,521.94; Maryland, $42,448.35; a difference of $14,926.41.

1941, Jackson Park, $27,185.74; Maryland, $40,104.99; a difference of $12,919.25.

For the period January 1, 1942 to July 27, 1942, Jackson Park, $14,773.82; Maryland, $21,880.14; a difference of $7,106.32.

The total for the film rental, for the five-year period, Jackson Park, $133,512.73 as compared to Maryland, $205,050.92; a difference of $71,538.19 that the Maryland film rental exceeded that of Jackson Park.

Q. Did you take that difference in film rental in arriving at the figure of the net difference?

A. Yes. The excess admissions of Maryland over
867 Jackson Park exceeded,—the excess film rental of the Maryland over that of Jackson Park, $115,982.34.

Q. During the five years you mentioned?

A. During the five-year period.
Q. What is that period?
A. July 28, 1937 to July 27, 1942, inclusive.
Mr. McConnell: You may cross-examine. Just one more question.
Q. From those records that you examined, can you tell the Court and jury whether or not Jackson Park, in computing its profits, charges any rent?
A. No, it does not charge any rent at all. In other words, there is no rental expense in the Jackson Park Theatre figures. In other words, the net profit is without any rental charge for the space occupied by the theatre.
Mr. McConnell: You may cross-examine.

Cross-Examination by Mr. O'Brien.

Q. In getting up the statement which you just testified about, you made adjustments on account of increased film rentals of the Maryland over Jackson Park. Did you make adjustment for any other increased costs?
868 A. No.
Q. You had not given any consideration to the question as to whether or not, were the Jackson Park to have greater attendance and greater admissions, its cost would be increased?
A. No. I just prepared the figures as before.
Q. You prepared them on the basis you were told to prepare it?
A. That is right.
Mr. O'Brien: I think that is all.

Cross-Examination by Mr. Seeley.

Q. Mr. Butler, have you any figures as to profits of the Jackson Park Theatre in 1932?
A. I don't believe I have any of those. Let's see,—I don't believe I have 1932 with me.
Q. Well, have you it anywhere else?
A. Yes, yes.
Q. How about 1931?
A. No, I wouldn't have. 1933 seems to be the oldest year I have.
Q. Do you mean now with you?
A. With me, the only other one.

Q. With you?
A. That is right, 1933.
Q. Well, do you know without making a search,
869 whether you have the figures for any earlier years?
A. Well, I believe that,—come to think of it, the 1932 figures are in one of the journals there, in the earlier journals.
Q. Tell me which one it might be in. I would like to have you look and see if it is.
A. Yes. It would be in this journal.
Q. Will you indicate to me on what pages?
Mr. O'Brien: That is Plaintiffs' Exhibit 52 for identification.
The Witness: A. Page 164 contains all the closing entries except that of depreciation. That is a relatively small amount.
Mr. Seeley: I see.
A. That would be in a separate journal entry.
Q. Does this go back prior to 1932?
A. It goes back to 1930, apparently.
Mr. Seeley: Thank you.
Q. Will you indicate, referring to any of these records that you wish, what the profit of Jackson Park Theatre was the whole year of 1937?
A. Yes; $30,723.59.
Q. And have you the figures there, showing what was charged against income in that year for maintenance,
870 repairs and supplies?
A. Yes.
Q. How much was that?
A. $11,853.59.
Q. And isn't it a fact that is about twice as much as had ever been charged against income for that item in any other year?
A. Well, approximately, yes.
Q. How much depreciation did you charge against income in 1937 before arriving at the profit of $30,723.59?
A. $2,164.27.
Q. How much did you charge in 1933?
A. $1,826.40,—wait a minute, just a minute. That may be incorrect. 1933?
Q. Yes.
A. The depreciation charged off was $50.00.
Q. And how much in 1934?

A. 1934, $160.41.
Q. $160.41?
A. That is right.
Q. That is depreciation on the building and equipment?
A. No, not the building.
Q. What?
A. Theatre equipment.
Q. That is personal property—
A. Not fixed assets, but assets of the theatre prop-
871 erty, and not the building structure.
Q. Not the building structure, in which the theatre is located?
A. That is right.
Mr. Seeley: I think that is all now. Will you be in the city for the next week or ten days?
A. I worked about fifteen or sixteen or eighteen hours a day. I am in the throes of income tax now, and I do that and sleep about four or six hours. Outside of that, I am working every minute.
Mr. Seeley: I can sympathize with that. Will you be in the city if it is absolutely necessary to reach you?
A. If I live that long, yes.
Mr. Seeley: I will try not to add to what I can agree is already an overwhelming burden.
The Court: Mr. Adcock, have you some questions?
Mr. Adcock: No.
Mr. McConnell: You are excused, Mr. Butler.
The Court: That is all of this witness?
Mr. McConnell: That is all.
(Witness excused.)
The Court: The next is Mr. Immerman?
Mr. McConnell: Yes.
872 The Court: How long will he take? Don't you think it would be a good time to take a recess now until 2:00 o'clock?
Mr. McConnell: It would be, yes.
The Court: We will adjourn until 2:00 o'clock.

(Whereupon a noon recess was taken until 2:00 o'clock of the same day, Tuesday, February 22, 1944.)

873 IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption)

Before Igoe, J., and J.
Tuesday, February 22nd, 1944,
2:00 o'clock P. M.

Court met pursuant to the noon recess.

Present: As before.

The Court: You may proceed.

874 WALTER IMMERMAN, a witness called on behalf of the plaintiffs, having been previously sworn, was examined further and testified as follows:

Direct Examination by Mr. McConnell (Cont'd).

Q. Mr. Immerman, there was a provision in this contract about which you were examined yesterday, Plaintiffs' Exhibit 46, which provided that deals with the Chicago Theatre should be worked out as the pictures were taken. Do you recall that provision in the contract?

A. Yes.

Q. Now, do you know what deals were worked out with the Chicago Theatre?

A. No.

Q. Under that?

A. I don't know of any.

Q. Have you any records which would show that?

A. If any pictures were played under that provision, the records would show it.

Q. And what records are those; where are those records?

A. Well, they should be in our office.

Q. Can you make a search and find out for us just what pictures were played under that provision of the con-
875 tract?

A. I will.

Q. And what the terms were, whether they were under percentage or straight rental?

A. I will.

Mr. McConnell: All right. Have you got that Exhibit? The Maryland Exhibit?

Q. Showing you Plaintiffs' Exhibit 44, does the Maryland Theatre lease that Theatre from some one?

A. I don't understand that.

Q. I mean Balaban & Katz. Does Balaban & Katz lease that Maryland Theatre from some one?

A. Yes.

Q. Who is the lessor?

A. I don't recall the name of the corporation.

Q. It is not connected with Balaban & Katz in any way, is it?

A. No.

Q. And what is the yearly rental on that lease?

A. This schedule here, if it is correct, shows seventy—about seventy-five thousand dollars.

Q. And will you read to the jury that your loss is in each of the years, in the operation of the Maryland Theatre?

A. From this statement, 1936 shows $27,531.25; 1937, $46,624.09; 1938, $59,962.02; 1939, $53,792.20; 1940,
876 $58,361.63; 1941, $61,274.09; and 1942, $51,083.67.

Q. So that to keep that C run, Balaban & Katz is willing to lose that amount of money in each of those years?

Mr. O'Brien: I object to that question.

The Court: Objection sustained.

Mr. McConnell: Q. You were asked to prepare a schedule of the rentals which Balaban & Katz pays in its first run theatres in the Loop. Did you prepare such a schedule?

A. I don't recall having been asked.

Mr. McConnell: Counsel, I asked you if you would, and you said that you would draw profit and loss statements on the different theatres.

Mr. Adcock: I don't know whether I have that here or not. I will have to look and see.

Mr. McConnell: Will you look and see?

Mr. Adcock: Yes. Schedule of film rental?

Mr. McConnell: Yes, profit, your profit and loss statements will show the film rentals.

Mr. O'Brien: Of course, I have already noted an objection, your Honor, that the profit and loss of the theatres
are made up of so many different factors, and not
877 shown to have been comparable, and I assume that objection stands as to this last testimony?

The Court: What is the reason for that?
Mr. Adcock: I don't remember being asked.
The Court: What is the reason for it?
Mr. O'Brien: It is not pertinent in this case.
Mr. McConnell: It is very material, because the rentals which are paid in the Loop runs by Balaban & Katz theatres is the nub of the whole industry here; it is the stake for which these men are working.
The Court: I don't get it clearly. What do you mean by rental?
Mr. McConnell: Film rental.
Mr. O'Brien: I am not talking about that.
The Court: Let us talk about the profit and loss. That is what we are talking about.
Mr. McConnell: That is shown in the profit and loss statement.
The Court: Well, if it has to do with film rental, that is one thing; but if it has to do with the completed statement of their profit and loss—
Mr. O'Brien: That is right.
The Court: (Continuing.) —of the individual theatres, that is something else again.
878 Mr. O'Brien: Your Honor so ruled before. I said on film rentals and on gross admissions, we were perfectly willing to give those figures.
Mr. McConnell: That is all right. That is all I want. That is the information I want.
Mr. Adcock: Film rental and gross admissions?
Mr. Connell: That is right. What is our next exhibit number? Mark this Plaintiffs' Exhibit 53 for identification.
(Thereupon said document was marked Plaintiffs' Exhibit 53 for identification.)
Q. I show you document marked for identification Plaintiffs' Exhibit 53, and ask you to examine that document and state if you know in what place it was produced in this cause?
A. What was your question, Mr. McConnell?
Mr. McConnell: Read the question, will you please?
(Question read.)
A. You mean the place of this?
Q. Yes.
A. I wouldn't know whether this was prepared in the Fox Film Company's office, or in our office.

Q. Well, who produced it here?
A. Who produced it here?
Q. Yes.
879 A. I wouldn't know that.

Mr. McConnell: Are you ready to stipulate, counsel, that is the document you turned over to me (addressing Mr. Adcock)?

Mr. Adcock: Why, if you ask me, show me the document, and you think it is the one I produced and gave to you, I will be very happy to tell you, but I don't know what it is.

Mr. McConnell: All right. Here it is.

Mr. Adcock: You tell me that is one I gave you; is it?

Mr. McConnell: Yes, sir.

Mr. Adcock: Then that is the one I gave you, I agree I gave it to you.

Mr. McConnell: I offer the document in evidence as Plaintiffs' Exhibit 53.

Mr. Seeley: I have no objection.

Mr. Adcock: I have no objection.

The Court: It may be admitted.

(Said document, so offered, was received in evidence as PLAINTIFFS' EXHIBIT 53, and is in words and figures as follows, to-wit:)

880 Mr. McConnell: Q. Will you read to the jury the provisions as to the release dates and minimum admission prices on the first page of that document?

A. Starting from the beginning of it? It doesn't all refer to what you have stated.

Mr. McConnell: Yes, I know.

The Witness: It starts up here (indicating).

Mr. McConnell: Starts from Chicago A pre-release.

A. Chicago A pre-release. These theatres to play in the fourth, fifth or sixth weeks after the last day of first run exhibition down town. Minimum adult admission per person, 30 cents, matinees, until 6:30 P. M., after 6:30 P. M., 50 cents.

Chicago B pre-release. These theatres to play in the seventh or eighth weeks after the last day of first run exhibition down town. Minimum adult admission per person 25 cents, matinee, until 6:30 P. M., after 6:30 40 cents.

Chicago C pre-release. These theatres to play in the ninth week after the last day of first run exhibition down

town. Minimum adult admission per person 20 cents, matinee, until 6:30 P. M., after 6:30 30 cents.

881 First week of Chicago General Release. These theatres to play in tenth week after the last day of first run exhibition down town. Minimum adult admission per person 15 cents, matinee, until 6:30 P. M., and after 6:30 25 cents.

Second week of Chicago General Release. These theatres to play in 11th week after the last day of first run exhibition down town. Minimum adult admission per person 15 cents, matinee, until 6:30 P. M., and after 6:30 20 cents.

Third week of Chicago General Release. These theatres to play in twelfth week after the last day of first run exhibition down town. Minimum adult admission per person, 15 cents, matinee, until 6:30 P. M., and after 6:30, 20 cents. Minimum admission for children at all times to be not less than 10 cents per person.

Q. Now, what season does that document cover?

A. In conjunction with contracts dated August 4th, 1944, between Fox, Twentieth Century-Fox Film Corporation and Balaban & Katz Corporation. It does not state the season.

Mr. McConnell: Please mark this Plaintiffs' Exhibit 54, and this next one with the next number.

(And thereupon said documents were marked Plain-882 tiffs' Exhibit 54 and 55 for identification.)

Mr. McConnell: Is that all the Fox film contracts? Mark these Plaintiffs' Exhibit 56 and 57 for identification.

(Thereupon said documents were marked Plaintiffs' Exhibit 56 and 57 for identification.)

Q. Now, I show you documents which are marked for identification Plaintiffs' Exhibit 54, 55, 56 and 57, and ask you to examine those documents (handing documents to the witness), and state whether or not those are the clearance agreements with Twentieth Century-Fox for the years which they purport to be?

A. It is true as to 57, 56, 55, and 54.

Q. Well, now, document identified as Plaintiffs' Exhibit 57 starts with page 2. Will you compare that document with Plaintiffs' Exhibit 53, and state whether or not the missing page 1 is the same as the page 1 on Exhibit 53?

A. I wouldn't have any way of knowing that. There seems to be a page missing.

Q. There is a page missing, isn't there?

A. Yes.

Q. Page 1?

A. Page 1.

883 Mr. Seeley: What is the date, Mr. McConnell?

The Witness: I don't know.

Mr. Seeley: I might have that missing page. I will be glad to give it to you if I have it.

Mr. McConnell: Under date of July 14th. The document is missing page 1.

Mr. Adcock: What year?

Mr. McConnell: July 14th, 1939.

Mr. Seeley: Just a minute until I see.

The Witness: These are all right.

Mr. McConnell: They are exactly alike; the same typewriting.

Mr. Seeley: I am sorry. At the moment, at least, I can not find it.

Mr. McConnell: Let me have that document. Maybe we can stipulate.

Mr. Seeley: It is in some of these other files.

Mr. McConnell: Are you willing to stiplate with me, Mr. Seeley, this page 1—see, page 1 is missing—apparently these documents are exactly the same, the second page (indicating), apparently made with the same carbon.

Mr. Seeley: If you give me a moment I would rather try to check that, because offhand I don't know.

884 Well, I just haven't any way of knowing whether they are the same or not.

Mr. McConnell: I offer in evidence—No, before I do that:

Q. On Plaintiffs' Exhibit 57, in view of the fact that the one page is missing, would you say that was the complete agreement?

A. Yes.

Q. Even though there is a page missing?

A. Well, excepting for the page that is missing, it is complete.

Mr. McConnell: Yes. I offer in evidence PLAINTIFFS' EXhibits 54, 55, 56 and 57.

Mr. Adcock: I wonder if it would be possible to have the dates of those stated in the record, as to each Exhibit, so that when we read the record we will be able to know.

The Court: That ought to be simple. What is the date of 54?

Mr. McConnell: The date of 54 is September 3rd, 1936. The date of Exhibit 55 is August 3rd, 1937. The date of Exhibit 56 is August 12th, 1938. The date of Exhibit 57 is July 14th, 1939.

Mr. Seeley: I have no objection to them.

885 Mr. Adcock: I haven't any objection. May I ask a question? Those are original documents, and I would like to have photostatic copies substituted.

The Court: It is understood that photostatic copies may be substituted for the original documents, on these Exhibits.

Mr. Adcock: And the other ones: May that be stipulated during the trial, as to both sides?

The Court: I think so. Counsel for both sides stipulate that for every original document introduced, a photostatic copy may be substituted.

Mr. McConnell: Certainly.

The Court: These last four Exhibits you just mentioned are admitted.

(Said documents so offered were received in evidence as PLAINTIFFS' EXHIBITS 54, 55, 56 and 57, and are in words and figures as follows, to-wit:)

886 Mr. McConnell: I am calling on Mr. Seeley to produce the agreement of Twentieth Century-Fox for 1940.

Mr. Seeley: Here it is. Wait until I get the first page.

Mr. Adcock: What date?

Mr. Seeley: August 2, 1940. Nine pages (handing to Mr. McConnell).

Mr. McConnell: I will have this marked as bulk Exhibit 58, Plaintiffs' Exhibit 58.

(Said documents were thereupon marked Plaintiffs' bulk Exhibit 58 for identification.)

Q. I show you a document marked for identification Plaintiffs' Exhibit 58, and ask you to state whether or not that is a photostat of the contract between Balaban & Katz and Twentieth Century-Fox, under the date it bears.

Mr. Seeley: I will stipulate that it is.

Mr. McConnell: All right. I will offer it in evidence.

The Witness: Clearance agreement.

Mr. Seeley: No objection.

The Court: It may be admitted.

(Said document so offered, was received in evidence as

PLAINTIFFS' EXHIBIT 58, and is in words and figures as follows, to-wit:)

887 Mr. McConnell: Q. I will ask you now to examine these documents and state whether or not they contain the same clearance agreements as those you have read to the jury in connection with Plaintiffs' Exhibit 53.

Mr. Seeley: What were you handing him? Were you handing him the Exhibits which have just been introduced?

Mr. McConnell: 54 to 58, inclusive.

Mr. Seeley: Thank you.

A. I read a part of the front page, is that what you refer to?

Mr. McConnell: Yes.

Mr. Adcock: It would seem to me quite a burden for the witness to compare the documents, or whether he can do it effectively.

Mr. McConnell: I am trying to shorten this. I want to help him.

The Court: How would you suggest he go about it?

Mr. Adcock: Well, they are documents offered in evidence, and they speak for themselves whether the language is the same. Why should this witness be called upon to examine them, and give his conclusion about it?

Mr. McConnell: I could ask him to read each clearance agreement, if you want me to do that.

888 The Court: Then why is it necessary to get his judgment as to what these clearance agreements are?

Mr. McConnell: I just want to shorten it with the jury, so that they can see all the agreements are the same.

The Court: Well, are they the same?

Mr. McConnell: Yes.

The Court: You folks ought to be able to reach that kind of agreement among yourselves, insofar as the language is concerned.

Mr. McConnell: They are the same.

The Court: Is there any dispute about that?

Mr. O'Brien: It is not a question of dispute, your Honor. There are so many documents that it is just physically impossible to read all those and be sure those are the ones.

The Court: As to the clearance contracts, as I understand it, his contention is that that clause is in all of them?

Mr. McConnell: That is right.

Mr. O'Brien: That is the first time I have ever seen these clearance agreements.

Mr. Adcock: I have not been able to examine them your Honor.

Mr. Seeley: I would have to look at them to see. I
889 don't doubt Mr. McConnell's word. I don't know it because I never compared it.

Mr. O'Brien: They are in evidence.

The Court: While we are talking, the witness is half way through, anyhow.

The Witness: Well, they vary as to form, they vary as to language, and they seem to be alike as to the admission price provisions that I read.

Mr. McConnell: That is all right.

The Witness: The language is different. It is missing in one. There is nothing in one of these Exhibits.

Mr. McConnell: Now, have you the contracts which were played under these clearance schedules?

Mr. Adcock: I object, as it is unintelligible.

Mr. McConnell: I haven't finished the question yet.

Mr. Adcock: You mean contracts under which the pictures were played.

Mr. McConnell: Q. Have you the contracts in your possession with Twentieth Century-Fox pertaining to the playing of pictures under these respective seasons by Balaban & Katz?

A. We should have.

Mr. McConnell: Well, they are here in the court
890 room. Will you get the folders for the Twentieth Century-Fox group, for the years 1936 and '7, 1937 and '38, '38 and '39?

Mr. Adcock: Mr. McConnell has examined the contracts. They are here. Get a couple of strong men and carry them over.

The Witness: Charlie Davidson might help you there; Charlie.

The Court: Well, bring the whole box up here, so it will be close to you.

Mr. McConnell: I think Mr. Goldberg can help you there a lot, because he is very familiar with all those. He know just where the contracts are.

Mr. Goldberg: Mr. McConnell, you looked through these later than I did. Perhaps you can help him.

Mr. McConnell: I have my hands full here.

The Court: It looks like Immerman is going to wind up doing the work.

Mr. Goldberg: What was the last question, Mr. McConnell?

Mr. McConnell: I want to get the folders of Balaban & Katz and Twentieth Century film contracts for the years, for the season starting with 1936 and '37, covering up to the season of 1941 and '42.

891 Mr. Seeley: Would it help you to have three of them to start on with the witness while they are looking up some more?

Mr. McConnell: Yes, that would help.

Mr. Seeley: Well, I have folders here that seem to be 1940-'41, 1939-'40, and 1938-'39 seasons.

Mr. McConnell: Mark these for identification Plaintiffs Exhibit 59, 60 and 61.

(Thereupon said documents were marked Plaintiffs' Exhibits 59, 60 and 61, for identification.)

Mr. McConnell: Q. Now, what folders have you got?

A. 36-37 and 37-38. Now, I don't know where these things go. I should have a headlight on them. Let's see; this is 36. That would be 36-37.

Mr. Seeley: Mr. McConnell, here is that 1941 clearance schedule, the front pages. Why don't you just substitute that?

Mr. McConnell: Yes. I will ask leave to substitute this document.

Mr. Adcock: '41.

Mr. McConnell: What is the Exhibit Number? That is Exhibit 57, I suppose that is 57-A.

(Thereupon said document was marked Plaintiffs' Exhibit 57-A for identification.)

892 Mr. O'Brien: Let the record show the lost is found: page 1 is no longer missing.

The Court: All right.

Mr. McConnell: All right, Mr. Immerman, I have enough to start with here.

The Witness: Have you?

Mr. McConnell: Q. I show you document marked for identification, or folder, rather, marked for identification Plaintiffs' Exhibit 59, and ask you to examine that folder. What year does the folder cover?

A. It says season 1938-'39.

Q. And what theatres does it cover?

A. All theatres operated by Balaban & Katz, I would say, at this time.

Q. Now, is there one blanket contract which covers all the product for the year?

A. Attached schedule showing the number of pictures for each photo-play, and is for the reason's product, known as K-6, covers everything under K-6 releases.

Q. Now, can you tell us whether or not the Chicago Theatre rents pictures under that contract on a percentage basis from Twentieth Century-Fox?

A. I guess we got them for nothing. I don't see anything in here that stipulates the price of the pic-
893 tures.

Q. Well, you will find it in this contract, I think, right here. No rental provisions in those contracts at all, is that your statement?

A. It must be somewhere. It isn't in this file. It refers to it here, designation of photoplays for group classfication to be made by the distributor.

Q. Do you find in that folder any provision as to departing from the scheduled admission prices, as to what will happen if you do?

A. Well, it is here, but I am sorry I can not read the print. It is too small for my vision.

Mr. O'Brien: If the Court please, I don't know that it makes any difference to me, but if it does, I certainly do not feel as though we should be bound by what the witness is able to cull out of these agreements.

Mr. McConnell: I am trying to avoid putting everything in evidence here.

Mr. O'Brien: (Continuing.) And give a legal conclusion.

The Court: What is it you are trying to find out with this question?

Mr. McConnell: I am trying to show that in these
894 contracts there is the same provision as to admission prices. In other words, that they forfeit the run if the admission price schedule is violated.

The Court: Is there any dispute about that?

Mr. McConnell: There seems to be. I couldn't get counsel to stipulate to it.

Mr. Adcock: That, I think, is an unfair statement.

The Court: Well, will they stipulate to it now?

Mr. O'Brien: Well,—

The Court: Sir?

Mr. Seeley: I don't know what the truth is.

The Court: Sir?

Mr. Seeley: I don't know what the truth is. I have not been able to read all of these things.

Mr. O'Brien: Why doesn't he offer them in evidence, then he has got them in, and they say what they say.

Mr. McConnell: If you want all these folders in evidence, all right.

Mr. O'Brien: I don't care whether they go in evidence or not.

The Court: Evidently that is what they want.

Mr. Seeley: No.

Mr. McConnell: All right. We will put them all in.

I offer in evidence as Plaintiffs' Exhibit 59, a folder
895 which purports to be contracts covering product between Balaban & Katz and Twentieth Century-Fox, for the season of 1938 and 1939, known as K-6.

Mr. Seeley: No objection.

(Said document, so offered, was received in evidence as PLAINTIFFS' EXHIBIT 59, and is in words and figures as follows, to-wit:)

896 Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 60 a folder which purports to be the contracts for product, between Twentieth Century-Fox and Balaban & Katz, for the season of 1939 to '40, known as blanket circuit deal K-7.

Mr. Seeley: No objection.

(Said document, so offered, was received in evidence as PLAINTIFFS' EXHIBIT 60, and is in words and figures as follows, to-wit:)

897 Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 61, a folder which purports to be contracts for product for the season 1940 to '41, K-8.

Mr. Seeley: No objection.

(Said document, so offered, was received in evidence as PLAINTIFF'S ~~EXHIBIT 61,~~ and is in words and figures as follows, to-wit:)

898 Mr. McConnell: Q. These folders are what?

A. I haven't finished sorting this. I don't know where that belongs. This is '36-'37, '37-'38, '38-'39. There are two folders for this year (indicating).

Mr. McConnell: All right. Mark these Plaintiffs' Exhibits 62, 63 and 64 for identification.

(Thereupon said documents were marked Plaintiffs' Exhibits 62, 63 and 64 for identification.)

Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 62, a folder which purports to be the product for the years 1936 and 1937, between Balaban & Katz and Twentieth Century-Fox.

(Said document, so offered, was receveid in evidence as PLAINTIFF'S EXHIBIT 62, and is in words and figures as follows, to-wit:)

899 Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 63 a folder which purports to cover product between Balaban & Katz and Twentieth Century-Fox for the season 1937 and 1938.

(Said document, so offered, was received in evidence as PLAINTIFFS' EXHIBIT 63, and is in words and figures as follows, to-wit:)

900 Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 64, which also purports to be a folder covering product for the same years.

(Said document, so offered, was received in evidence as PLAINTIFFS' EXHIBIT 64, and is in words and figures as follows, to-wit:)

901 Mr. Allcock: Now, I wonder if the record would show what the sources of those are. Some came from our files and some from Mr. Seeley's files.

Mr. McConnell: All right. Let the record show that the folders covering product, K-6, K-7 and K-8, came from the files of Mr. Seeley, representing Twentieth Century-Fox; and the others from the files of Balaban & Katz, which are here in court.

Now, we still want the product for 1941 and '42.

Mr. Goldberg: Those are lying up there (indicating), Mr. McConnell, right in back of Mr. Immerman.

Mr. McConnell: Now, let us have the next number.

Mr. Seeley: I have a suggestion here which may be a short cut, Mr. McConnell.

Mr. McConnell: I would certainy welcome it.

Mr. Seeley: All right. I have looked through a large number of contracts here, dated in 1941 and 1942, between Fox and Balaban & Katz. I find that the great bulk of them are on the same printed form, Form E-871. Now, I will certainly stipulate that all the contracts that are on Form E-871 contain the identical language, minimum admission prices.

Mr. Adcock: The printed language.

902 Mr. Seeley: As far as the printed language goes, and we have two other forms, E-863 and E-870. That would reduce maybe 25 to 30 to 3, in number, if you wish to take that suggestion.

Mr. McConnell: Well, I think it is a good suggestion, but I am faced with the same thing you are. I don't know until I look at these documents.

Mr. Seeley: All right.

Mr. McConnell: Whether that is so or not. I think I am going to put all these documents in evidence, then maybe we can shorten the record after we get them in.

Mr. Seeley: All right.

Mr. McConnell: Now, mark these Plaintiffs' Exhibits 65, 66 and 67.

(Thereupon said documents were marked Plaintiffs' Exhibits 65, 66 and 67 for identification.)

Now, I offer in evidence as Plaintiffs' Exhibit 65 a folder for the years 1941 and 1942, between Fox and Balaban & Katz; and as Exhibit 66, a folder of contracts for the years 1940 and 1941, between Fox and Balaban & Katz.

Mr. Adcock: Haven't you already had one of those?

Mr. McConnell: There are three folders.

Mr. Adcock: That you got from Mr. Seeley?

903 Mr. McConnell: They all came out of the Balaban & Katz files.

Mr. Adcock: They are out of consecutive order.

Mr. McConnell: And as Plaintiffs' Exhibit 67 a folder marked Twentieth Century-Fox—Balaban & Katz, for 1939 to 1940 product.

The Court: If there is no objection, they may be admitted.

(Said documents, so offered, were received in evidence as PLAINTIFFS' EXHIBITS 65, 66 and 67, and are in words and figures as follows, to wit:)

904 The Court: What is next?

Mr. McConnell: Now, that covers Twentieth Century-Fox. Now, let us have Paramount.

Now, I called on Mr. Adcock to produce all the clearance schedules between Balaban & Katz and Paramount, for the years in question here, which are the years from 1936 down to 1942.

Mr. Goldberg: Shall I go back to work, Mr. McConnell?

Mr. McConnell: He could only find two clearance schedules, and stated to me that they had had litigation, and they were in the hands of different lawyers, and that was all he could find. Is that a correct statement?

Mr. Adcock: Yes.

Mr. McConnell: But he said he would agree with me that these two correctly set forth the clearance provisions which would have been in force in those other years. Is that correct?

Mr. Adcock: That is, substantially. I said "substantially".

The Court: "These two", what do you mean by that?

Mr. McConnell: Mark them for identification, then we will know what we are talking about.

905 (Thereupon said documents were marked Plaintiffs' Exhibits 68 and 69 for identification.)

Mr. McConnell: I am referring, your Honor, to Plaintiffs' Exhibits for identification 68 and 69, which purport to be clearance schedules between Paramount and Balaban & Katz for the years 1937 and '38, and the years 1938-'39.

Mr. Adcock: I am willing to stipulate that the clearance schedules which we have not been able to find for the other years are substantially like the ones that have just been identified.

The Court: Very well.

Mr. McConnell: I offer these documents in evidence as Plaintiffs' Exhibits 68 and 69.

Mr. Adcock: No objection.

(Said documents, so offered, were received in evidence as PLAINTIFFS' EXHIBITS 68 and 69, and are in words and figures as follows, to-wit:)

906 Mr. McConnell: I will ask the witness to examine these documents and state, if he will, whether or not the clearance provisions thereon are substantially the same as those in the Twentieth Century-Fox clearance agreements?

Mr. O'Brien: I make the same objection here. You are offering them in evidence; they speak for themselves.

Mr. Adcock: They speak for themselves, instead of a comparison by this witness, taking up the time of this witness examining them and comparing them.

Mr. McConnell: All right.

The Court: Why isn't that objection sound? Because if they are introduced in evidence, and the time comes when

the jury is going to consider them, why can't the jury make the comparison?

Mr. McConnell: Now, Mr. Goldberg—where is he? I want to get the product under the clearance agreements, Paramount and Balaban & Katz.

The Witness: Nothing here for 1939 and '40.

Mr. McConnell: Mark those with the next numbers.

(Thereupon said documents were marked plaintiffs' Exhibit 70 to 75, both inclusive, for identification.)

Mr. McConnell: These are all short subject con-
907 tracts, are they not?

Mr. Goldberg: I pulled them out of the files of Paramount. I didn't even look to see what was inside of them.

Mr. McConnell: All right. I offer in evidence as Plaintiffs' Exhibit 70, a folder purporting to cover Paramount product, with Balaban & Katz, for the season of 1936 and 1937; Plaintiffs' Exhibit 71, purporting to cover product between the same parties, for the season 1937 and '38; Plaintiffs' Exhibit 72, purporting to cover product between the same parties, for the years 1937 and '38; Plaintiffs' Exhibit 73 between the same parties, purporting to cover product for the years 1938 and '39; Plaintiffs' Exhibit 74, between the same parties, purporting to cover product for the season 1940-1941; Plaintiffs' Exhibit 75, between the same parties, purporting to cover product for the years 1941 and 1942.

You have produced now all your files?

Mr. Goldberg: Those are all the folders I found.

Mr. McConnell: I offer those documents in evidence.

The Court: If there is no objection, they may be admitted.

908 (Said documents, so offered, were received in evidence as PLAINTIFFS' EXHIBITS 70 to 75, both inclusive, and are in words and figures as follows, to-wit:)

909 Mr. McConnell: That covers all the Paramount.

I also offer in evidence Plaintiffs' Exhibit 76, which purports to be a folder, between Paramount and Balaban & Katz, for the season's product of 1936 and 1937.

(Said document, so offered, was received in evidence as PLAINTIFFS' EXHIBIT 76, and is in words and figures as follows, to-wit:)

910 Mr. McConnell: Now, will you mark this Plaintiffs' Exhibit 77 for identification.

(Thereupon said document was marked Plaintiffs' Exhibit 77 for identification.)

Mr. Adcock: Paramount?

Mr. Korfist: Yes.

Mr. McConnell: Paramount and Balaban & Katz. Mark these Plaintiffs' Exhibits 78, 79 and 80 for identification.

(And thereupon said documents were marked Plaintiffs' Exhibits 78, 79 and 80 for identification.)

Mr. McConnell: I offer in evidence as Plaintiffs' Exhibits 77, 78, 79 and 80, which purport to be clearance schedules between Balaban & Katz and RKO for the years 1937-'38, 1938-'39, 1940-'41, 1939-'40, and apparently the season of 1936-'7 can not be found. Is that correct, Mr. Seeley?

Mr. Seeley: Yes. I believe so.

The Court: If there is no objection, they may be admitted.

(Said documents, so offered, were received in evidence as PLAINTIFFS' EXHIBITS 77, 78, 79 and 80, and are in the words and figures as follows, to-wit:)

911 Mr. McConnell: Now, could I have the product of Balaban & Katz and RKO?

Mr. Seeley: Yes, sir.

Mr. McConnell: For those seasons?

Mr. Seeley: I can not tell you offhand. This appears to start with the 1936-'37 season. I think you will find it covers all seasons.

Mr. McConnell: The contract refers to a master agreement, Mr. Seeley.

Mr. Seeley: Sir?

Mr. McConnell: The contract refers to a master agreement, 1936-'37. Do you have that?

Mr. Seeley: Not with me. I will have to see if I can find it. Is that all it says about it?

Mr. McConnell: It refers to master agreement covering the exhibition of 1936-'37 productions.

Mr. Seeley: I will have to look for it. I know I haven't it here. Where is that?

Mr. McConnell: (Indicating.)

Mr. Seeley: Well, this seems to say that is the master agreement.

Mr. McConnell: All right.

Mr. Seeley: That is what it is labelled, "master agreement".

912 Mr. McConnell: Will you mark these Plaintiffs' Exhibits 81 to 102, both inclusive, for identification?

(Said documents were thereupon marked Plaintiffs' Exhibits 81 to 102, both inclusive, for identification.)

Mr. McConnell: I offer in evidence as Plaintiffs' Exhibits 81 to 102, both inclusive, which purport to be contracts between Balaban & Katz Corporation and RKO, for the seasons 1936-'37, 1938-'39, 1939-'40, 1940-'41, 1941-'42.

Mr. Seeley: No objection.

The Court: They may be admitted.

(Said documents, so offered, were received in evidence as PLAINTIFFS' EXHIBITS 81 to 102, both inclusive, and are in words and figures as follows, to-wit:)

913 Mr. McConnell: Now, have you any folders for Loew's and Metro-Goldwyn-Mayer, aside from the master contract?

Mr. Seeley: No, I have not. That is, do not misunderstand me. I didn't know you wanted any.

Mr. McConnell: I haven't asked whether there are any. I am asking Mr. Goldberg, who has the B. & K. file.

Mr. Goldberg: I haven't looked.

Mr. McConnell: Will you look, please.

The Witness: You don't want this one, do you, Mr. McConnell? I will put it back in the files, so it won't be mislaid around here.

Mr. McConnell: That is the one we were looking for, and missed, isn't it?

The Witness: It was right over there.

Mr. McConnell: I will have it marked.

Mr. Adcock: Why don't you mark it A?

Mr. McConnell: All right. I ask that this Exhibit be marked Plaintiffs' Exhibit 59-A.

(Thereupon said document was marked Plaintiffs' Exhibit 59-A.)

Mr. McConnell: I offer in evidence Plaintiffs' Exhibit 59-A, which purports to be a folder containing contracts

914 between Twentieth Century-Fox and Balaban & Katz for the year's product of 1938 and 1939 (handing document to Mr. Adcock).

(Said document, so offered, was received in evidence as PLAINTIFFS' EXHIBIT 59-A, and is in words and figures as follows, to-wit:)

915 Mr. McConnell: Have you any clearance schedules on that, Mr. O'Brien?

Mr. O'Brien: I have been able to get but one clearance schedule with Balaban & Katz, and that is dated October 22nd, 1941; but I am informed that those for the prior years were substantially the same.

Mr. McConnell: Would you agree with me that they were the same?

Mr. O'Brien: Yes; substantially the same; and as to our contracts, Mr. McConnell asked for those yesterday, and I tried to get Vitagraph today, also our own shop, but both were closed, and I will have those in the morning.

Mr. Goldberg: This is everything we have on M-G-M and Loew's.

Mr. McConnell: All right. Mark these Plaintiffs' Exhibits 103 to 11, both inclusive.

(Thereupon said documents were marked Plaintiffs' Exhibits 103 to 11, both inclusive, for identification.)

Mr. McConnell: I am going to offer in evidence Plaintiffs' Exhibits 103 to 11, both inclusive, purporting to be contracts covering product between Metro-Goldwyn-Mayer and Balaban & Katz during the seasons starting with
916 1936 and ending with 1942.

Mr. Seeley: No objection.

The Court: No objection?

Mr. Seeley: No.

The Court: Then they may be admitted.

(Said documents, so offered, were received in evidence as PLAINTIFFS' EXHIBITS 103 to 111, both inclusive, and are in words and figures as follows, to-wit:)

917 Mr. McConnell: Now, mark this Plaintiffs' Exhibit 112 for identification.

(Thereupon said document was marked Plaintiffs' Exhibit 112 for identification.)

918 Mr. McConnell: I offer in evidence Plaintiffs' Exhibit 104, which purports to be—

The Court: Your last offer is 103. This should be something else.

Mr. McConnell: It ought to be 112. I offer in evidence Plaintiffs' Exhibit 112, a document which purports to be playing position and clearance schedule between Vitagraph, Inc., and Balaban & Katz, dated Chicago, Illinois, October 22, 1941.

The Court: If there is no objection, it may be admitted.

Mr. Adcock: What date?

Mr. McConnell: October 22, 1941.

The Court: It may be admitted.

(Whereupon said document so offered was received in evidence as PLAINTIFFS' EXHIBIT 112, and is in words and figures, as follows, to-wit:)

919 Mr. McConnell: Now, Mr. Goldberg, can you get the product for Warner Bros.?

The Court: Is this your last batch of these exhibits?

Mr. McConnell: Yes, your Honor.

The Court: Suppose we take a recess for a few minutes while you and Mr. Goldberg figure this out.

(Whereupon a recess was had.)

Mr. McConnell: Mark these folders Plaintiffs' Exhibit 113, 114, 115, 116, and 117.

(Said documents so marked by reporter.)

Mr. McConnell: Mark this folder Plaintiffs' Exhibit 65-A.

(Said document so marked by reporter.)

Mr. McConnell: Mark those documents 118 to 122, inclusive.

(Said documents so marked by reporter.)

Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 65-A, folder for Fox and Balaban & Katz product for the years 1941-42.

The Court: If there is no objection, it may be admitted.

920 (Whereupon said document, so offered was received in evidence as PLAINTIFFS' EXHIBIT 65-A, and is in words and figures, as follows, to-wit:)

921 Mr. McConnell: I offer in evidence as Plaintiffs' Exhibits 113 to 117, both inclusive, folders which purport to be product between Vitagraph and Balaban & Katz for the years 1936-37, 1937-38, 1938-39, 1939-40, and 1940-1941.

The Court: If there is no objection, they may be admitted.

(Whereupon the said documents so offered were received in evidence as PLAINTIFF'S EXHIBITS 113, 114, 115, 116, and 117, respectively, and are in words and figures, as follows, to-wit:)

922 Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 118, clearance schedules between Warner Bros.

and Warner Bros. Circuit Management Corporation for the years 1936, '37 and '38; 1937-38, 1938-39, 1939-40, 1940-41 and 1941-42, as the bulk exhibit, Plaintiffs' Exhibit 118.

The Court: It may be admitted.

(Whereupon the said documents so offered were received in evidence as PLAINTIFFS' EXHIBIT 118, and is in words and figures as follows, to-wit:)

923 Mr. McConnell: I also offer in evidence as Plaintiffs' Exhibit 119, clearance schedule between Paramount Pictures Distributing Corporation and Warner Bros. Circuit Management Corporation for the years 1936-37, 1937-38, 1938-39, 1939-40, 1940-41, 1941-42, and 1942-43.

Mr. Adcock: I don't see how the last one can possibly have any bearing on this case.

The Court: I don't see what connection that has.

Mr. McConnell: I don't, either, but it is included in the bulk exhibit. I withdraw the offer of that sheet.

The Court: All right. As far as the rest are concerned, they may be admitted.

(Whereupon said documents so offered was received in evidence as PLAINTIFFS' EXHIBIT 119, and is in words and figures, as follows, to-wit:)

924 Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 120, schedule of clearance between Warner Bros. Circuit Management Corporation and Warner Bros. Pictures, for the seasons 1936-1937, 1937-38, 1938-39, 1939-40, 1940-41.

The Court: They may be admitted.

(Whereupon the said document so offered was received in evidence as PLAINTIFFS' EXHIBIT 120, and is in words and figures as follows, to-wit:)

925 Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 121, clearance schedule between Warner Bros. Circuit Management Corporation and RKO Radio Pictures for the years 1936-37, 1938-39, 1939-40, 1940-41, 1941-42.

The Court: If there is no objection it may be admitted.

(Whereupon the said document so offered was received in evidence as PLAINTIFFS' EXHIBIT 121, and is in words and figures as follows, to-wit:)

926 Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 122, schedule of clearance with Loew's, Incorporated, and Warner Bros. for the seasons of 1936-37, 1937-38, 1940-41,—1942 I do not offer.

The Court: It may be admitted.

(Whereupon the said document so offered was received in evidence as PLAINTIFFS' EXHIBIT 122, and is in words and figures as follows, to-wit:)

927 Mr. McConnell: Mark this Plaintiffs' Exhibit 123.

(Said document so marked by reporter.)

Mr. McConnell: I offer in evidence as Plaintiffs' Exhibit 123, tabulation of fourteen pages of different theatres, for which Paramount Pictures, Inc., admits ownership or control.

Mr. Seeley: I object to that, your Honor. I have a point there on which I would like to be heard.

The Court: What is that offer?

Mr. McConnell: An offer of a tabulation of theatres in which Paramount Pictures, Inc., has an ownership.

Mr. Seeley: All over the country.

Mr. McConnell: All over the country.

Mr. Seeley: We object to it as irrelevant, immaterial—

The Court: Let us pass that for the time being. He made the offer and we can pass on it later on.

Mr. McConnell: I think that is as far as I can go until I have the Warner Bros. contracts.

Mr. Seeley: I have some, if you want to go ahead with them,—Fox and Warner Bros. contract.

928 Mr. McConnell: All right.

Mr. Seeley: There is 1939-40, 1940-41, 1938-38, 1937-38. Here is 1936 and 1937, and 1935-36 in the same folder. I suppose '35-36 ought to be taken out.

Mr. McConnell: I can limit my offer, can't I?

Mr. Seeley: I will take them out later, sure.

Mr. McConnell: Mark these Plaintiffs' Exhibits 124, 125, 126, 127, and 128.

(Said documents so marked by reporter.)

Mr. Seeley: And here is a group of contracts that is not in a folder, which covers 1941-42.

Mr. McConnell: Mark this Plaintiffs' Exhibit 129.

(Said document so marked by reporter.)

Mr. McConnell: I offer in evidence Plaintiffs' Exhibit 124, which purports to be a folder containing product between Warner Bros. Circuit and Twentieth Century-Fox for the year 1936-37.

Mr. Seeley: No objection.

The Court: If there is no objection, it may be admitted.

929 (Whereupon the said document so offered was received in evidence as PLAINTIFFS' EXHIBIT 124, and is in words and figures as follows, to-wit:)

930 Mr. McConnell: I offer in evidence Plaintiffs' Exhibit 125, which is product between Twentieth Century-Fox and Warner Bros. Circuit for the season 1937-38.

The Court: It may be admitted.

(Whereupon the said document so offered was received in evidence as PLAINTIFFS' EXHIBIT 125, and is in words and figures as follows, to-wit:)

931 Mr. McConnell: I offer in evidence Plaintiffs' Exhibit 126, which purports to be contracts covering product between Warner Bros. and Twentieth Century-Fox for the season 1938-39.

I offer in evidence Plaintiffs' Exhibit 127, which purports to be a folder covering contracts between Warner Bros. and Twentieth Century-Fox for the season 1939-1940.

I offer in evidence Plaintiffs' Exhibit 128, which purports to be a folder containing contracts covering product for the year 1940-41, between Warner Bros. Circuit and Twentieth Century-Fox.

I offer in evidence bulk,—Plaintiffs' Bulk Exhibit 129, which purports to be contracts between Twentieth Century-Fox and Warner Bros. Circuit Management Corporation, for the year 1941-42.

The Court: If there is no objection, they may be admitted.

(Whereupon the said documents so offered were received in evidence as PLAINTIFFS' EXHIBITS 126, 127, 128, and 129, respectively, and are in words and figures as follows, to-wit:)

932 Mr. McConnell: That is as far as I can go until I have Warner Bros. contracts. With that and with the rental figures, the plaintiffs' case will be closed.

The Court: Can you gentlemen proceed with your cross-examination?

Mr. O'Brien: I would like to get more clear, what rental figures Mr. McConnell wants.

Mr. McConnell: I want the film rental figures for the years 1936 to 1942, up to the time of this lawsuit, from the Warner Bros. pre-release runs, and from Balaban & Katz Loop runs in one group, and pre-release runs in the other.

Mr. Seeley: All parts of the city.

Mr. O'Brien: That is why I ask, why he wants them from all parts of the city in this little controversy.

Mr. McConnell: It is not a little controversy. This is a stake. This whole matter, this is the nut of it.

The Court: What is the materiality or relevancy of having the figures for other parts of the city?

Mr. O'Brien: Why pry into all of our figures, when they are not relevant.

933 Mr. McConnell: The pre-release runs are the important runs, as testimony has stated. They are the ones that have the money in them. We want to know what the stakes are, what the rentals are.

The Court: All over the city?

Mr. McConnell: Well, I think it has a bearing, all over the city. It is the nature of the run, rather than the location; in the city limits, the Loop and A houses and B houses. I will limit it to the B houses. I don't think I need to go farther than that.

Mr. O'Brien: As far as that is concerned, we have no pre-release houses except on the South Side.

Mr. McConnell: Then why object to the other?

Mr. O'Brien: After all, I have to deal with this record, too. Certainly you don't claim to be in competition with a theatre in Evanston or on the extreme South Side.

Mr. McConnell: If you only have theatres on the South Side—

Mr. O'Brien: When I was talking about it, I was talking about houses in immediate competition with Jackson Park Theatre, such as the Maryland and the Jeffery,

934 and not theatres so far remote.

The Court: I can't understand why the rental in other parts of the city is material here.

Mr. Adcock: I object to furnishing the Loop runs the same way.

The Court: Well, I think there is some merit in the Loop runs. I think he is entitled to the Loop runs and the southern part of the city.

Mr. Adcock: I don't see how the Loop runs are material. I understand he is asking for film rental. How could that be comparable to the situation out here?

Mr. McConnell: That is the motive of the whole thing, to share in those rentals.

The Court: All right. Do you subpoena it in?

Mr. Adcock: I want to preserve my objection to that

line of evidence, but whatever the Court feels should be produced as far as figures are concerned, can be produced. What is it you want as far as the Loop is concerned? I understand that is all you want from me, just the Loop film rental?

Mr. McConnell: That is right.

The Court: How about theatres out South?

935 Mr. McConnell: And South Side theatres, yes.

Mr. Adcock: And our South Side theatres?

Mr. McConnell: Yes.

Mr. O'Brien: That is, the theatres in A and B runs?

The Court: He mentioned that.

Mr. Adcock: I think you have the Maryland.

Mr. McConnell: That is C run.

Mr. Adcock: He wants A and B runs. He wants the Tower and Tivoli.

Mr. McConnell: That is right.

Mr. Seeley: I would like to be clear as to whether Mr. McConnell is asking me to produce anything.

The Court: I understand there are no exceptions. He includes you, too.

Mr. McConnell: That is right.

Mr. Seeley: I better state I cannot possibly produce all the figures, unless within three or four days. They would have to be compiled. Such part as I have already compiled, I will be glad to produce.

Mr. McConnell: If you are willing to have me close my case subject to that, it is all right; but giving me the right to reopen my case later on to include that.

936 Mr. O'Brien: Mr. McConnell, have you them from Warner Bros.? I presume you mean how much film rental we had?

Mr. McConnell: Yes.

Mr. O'Brien: Why do you want to duplicate by getting figures from a few of the distributors? You want to know the aggregate film rental we pay in those different houses?

Mr. McConnell: That is right.

Mr. O'Brien: Then why bother Mr. Seeley about it? That is duplication.

Mr. McConnell: He has theatres in the Loop.

The Court: There is no need to duplicate the figures. That just affects your houses in the Loop.

Mr. Seeley: That I think I have. There is only one

theatre covered by this lawsuit. Those figures I think I have.

The Court: Where does that leave us, so far as this day is concerned?

Mr. McConnell: I have no further questions to ask Mr. Immerman.

The Court: You say you want this information from Mr. O'Brien?

Mr. O'Brien: The contracts will be here in the
937 morning.

The Court: Why not proceed with the cross-examination of this man?

Mr. Seeley: I think I can.

Mr. Adcock: As I understand it now, it is the film rental paid by Loop houses for these five companies?

Mr. McConnell: That is correct.

The Court: All right. Cross-examine.

Cross-Examination by Mr. Adcock.

Q. Mr. Immerman, will you state a little bit more extensively than you stated on direct examination, your connection with Balaban & Katz from the beginning down to your present employment?

Mr. McConnell: If the Court please, there is no direct examination of this witness. This witness was called under the rule for cross-examination by the plaintiffs.

Mr. O'Brien: Mr. McConnell has made that contention before.

Mr. Adcock: Under the rule,—I presume you were calling him under Rule 37?

Mr. McConnell: Under the rule where I have a
938 right to call an officer of the adverse party to the lawsuit, and will not be bound by the testimony in cross-examination.

Mr. O'Brien: There is the rule 43-B, which says, "May be cross-examined by an adverse party upon the subject matter he is examining in chief," which you have just finished.

The Court: He is standing on that. He said he did not examine him in chief.

Mr. O'Brien: He asked what his connection with the Company was.

Mr. Adcock: I asked the witness to state somewhat

more extensively, to describe somewhat more extensively his connection with Balaban & Katz.

The Court: I think he may answer that question.

The Witness: A. In other words, you want to know how long I have been with the company?

Mr. Adcock: Q. Yes. What was your first employment?

A. 19, I think, 24, assistant manager of the Chicago Theatre.

Q. For how long?

A. Until about August 19, 1926. Then I was sent to Detroit. I opened and operated the Michigan Theatre in Detroit until about 1927 or '28, when I came back to
939 Chicago and assisted in the operation of a subsidiary of Balaban & Katz, known as Greater Chicago Theatres Corporation.

Q. How many theatres did they have?

Mr. McConnell: I object to that. That is not—

The Court: He may answer.

The Witness: A. Oh, about ten or twelve.

Mr. Adcock: Q. Pardon?

A. Ten or twelve theatres.

Q. How long were you in that department?

A. Approximately 1927 and '28. Then I returned to Detroit, and was head of Detroit Operations, all the theatres in Detroit that were operated by our company. In 1930 I went back to Chicago in my present position, and have been there ever since.

Q. What is your present position?

A. I am responsible for the general operation of all the theatres in all its phases except finance and corporate matters.

Q. That was about 1930, was it?

A. 1930.

Q. And you stated you were also vice-president of the corporation?

A. Yes.

940 Q. Will you state a little bit more in detail the nature of your duties and responsibilities in connection with the operation of these theatres?

Mr. McConnell: If the Court please, I don't see that that cross-examination is germane to the direct examination. I merely asked whether he was an officer of the com-

pany. As to his duties, that is all right in the defendants main case, but is not proper here.

The Court: He may answer.

The Witness: A. To supervise the employment o help, maintenance of theatres, all modification, structura and otherwise, all of the equipment, purchasing of film and supervise advertising; in fact, everything that pertain to the theatre excepting finance and corporate matters I am not a director of the company.

Mr. Adcock: Q. You were shown a chart, which i Plaintiffs' Exhibit 45, I believe, and which was offere in evidence. Do you remember Mr. McConnell asked yo some questions about certain theatres on that chart?

941 Q. Will you show the jury the chart and explai to them the different matters and things that ar shown on that chart, particularly with reference to th playing positions of the various theatres which are name on the chart, what lines show that?

The Witness: What process will I use?

Mr. Adcock: Just step right up to the jury.

Mr. McConnell: I object to that, if the Court pleas The map is in evidence and speaks for itself.

Mr. Adcock: The jury has a right to know what w are talking about now.

The Court: Well, the map is eventually going to th jury, isn't it?

Mr. Adcock: Pardon?

The Court: The map is going to the jury?

Mr. Adcock: Yes, but I wanted explained here wha the map shows.

The Court: Well, you can ask him the questions an he can tell.

Mr. Adcock: Q. You have a column there with the nam of the theatre, haven't you?

The Witness: A. Yes, sir.

Q. And the next column shows the date when th Balaban & Katz Corporation acquired the theatres by 942 purchase or by lease, doesn't it?

A. That is right.

Q. And then at the top there are certain figures rang ing from 1930 to 1943?

A. Yes.

Q. Those refer to years, do they not?

A. Yes.

Q. And in the column under the designation of the year 1930, say, in 1931, and then there is another column that has the data with reference to the year, of what happened in 1931 with reference to the different theatres; is that right?

A. Yes.

Q. And all the years following, is that correct?

A. Yes.

Q. And in that column, or in those columns there appear the playing positions of the different theatres according to the years designated, is that right?

A. Yes.

Q. Also, you see the letters S.F. and certain figures following it in some of the columns?

A. Yes.

Q. What does that mean?

943 Mr. McConnell: I object to that. It is all set out on the map.

The Court: You asked him about those letters. I think he is entitled to answer the same kind of question. S.F., explain what they mean.

The Witness: S.F.,—single feature.

Mr. Adcock: Q. Then there are the letters D.F., which means double feature, is that right?

A. Yes.

Q. And the dates which follows S.F. or D.F., mean what?

A. The dates that single feature or double feature started in that particular theatre.

Q. Mr. McConnell asked you with reference to the change of playing position of a number of theatres, the names of which appear on that chart, isn't that true—in his examination?

A. He did ask me the Granada and other theatres.

Q. Will you take the Granada Theatre, and indicate what the change was, first the playing position of the theatre in the year 1930, and what change took place in the playing position of that theatre in the years following as shown by that chart?

944 A. In 1930 the Granada Theatre played in A week.

Q. Then, in the next, in 19—

A. In 1931, in A week.

Q. Is there any designation there with reference to double features?

A. Yes, double features April 13, 1931.

Q. Is that April 13 or 3rd?

A. April 13th, it looks like. April 3rd, rather.

Q. April 3rd?

A. Yes.

Q. And that shows it playing in A position, is that right, and pre-release?

A. Yes.

Q. And the next shows single features, does it not?

A. In 1932.

Q. Yes, and what does—is that October 17, 1932?

A. Yes.

Q. Changed to—

A. A week.

Q. Changed to single feature, is that correct?

A. Yes.

Q. Still in A week?

A. Yes.

Q. Then in 1933 it changed from A week to B week, is that right?

A. Yes.

Q. And continued in B week until what time?

945 A. Until March the 27th, 1936.

Q. And then what happened?

A. Well, it was single feature then. On October 16th of that year it changed to double feature in A week.

Q. And then changed back to its former position, to A week on that date, did it?

A. March the 27th, yes.

Q. And continued in that playing position until the end of the period covered by the chart,—correct?

A. Yes.

Q. What was the occasion for that theatre changing its playing position, moving down from A to B week in 1933?

Mr. McConnell: What was that question?

(Question read)

Mr. McConnell: I object to that, if the Court please.

The Court: What is your objection?

Mr. McConnell: The objection is that explanation of the move is all right on the defendants' case, but there was no cross examination that opened up this avenue.

Mr. Adcock: The reason of it is, your Honor—

946 The Court: Sir?

Mr. Adcock: The reason of it is—

The Court: Of course you are limited in your cross-examination on what he developed on direct.

Mr. Adcock: Yes, but he asked about the change of the playing position on this theatre.

Mr. McConnell: All I did was ask him what the map showed.

Mr. Adcock: Oh, yes, he did.

The Court: He may answer the question.

Mr. McConnell: I asked him to read the map.

Mr. O'Brien: You had a purpose; you wanted to show the jury it moved up.

The Court: All right, you may answer the question, Mr. Witness. The objection is overruled.

The Witness: Well, if I remember correctly, in 1933 and '34, and part of 1932 and '35 were the years of depression, during which time our business suffered materially at the box office. Our attendance dropped. We moved the playing position of the theatre from A to B week, hoping that we could preserve our attendance, reduce our operating expense, and possibly preserve the growth.

Mr. Adcock: Q. And when you moved to change

947 to B week did you charge any less admission price at those theatres than you did prior to that time?

Mr. McConnell: I cannot see how that is proper, if the Court please, on the limited cross-examination that I have, simply identifying what was on the map. Now he is going into the admission price charged.

The Court: He may answer the question.

The Witness: Yes.

Mr. Adcock: Q. In other words, you charged B week prices, is that correct?

A. Yes.

Q. And what was the occasion for your moving back to the position that the Granada had occupied before this to A week in 1936?

A. Evidence of recovery in theatre attendance.

Q. Will you take, now, the Harding Theatre, about which Mr. McConnell asked you, and will you state with reference to the Harding Theatre the same facts that you have described with reference to the Granada and the play-

ing position, change to double feature and single feature and later the double feature in 1936?

A. The Harding Theatre in 1930 was playing in 948 A week; in 1931 playing A week and double featured during that year beginning April 13. Continued double featuring until October 7, 1932. The playing position is still A week. Went to single features, 1933, A week. January 5, 1934 moved back to C week. Still in B week in 1935. November 27th, 1936, went back to its original playing position, A week. Started double featuring at the same time.

Q. And from that time—

A. It has remained in A week.

Q. Remained in A week?

A. According to the chart.

Q. Was the occasion for changing to B week, that is from A to B, and B back to A, the same as you have indicated as to the Granada change?

A. Yes.

Q. And when you were playing in C week was the cost of film less per year than it was while you were playing in A week?

Mr. McConnell: I object to that, if the Court please. The best evidence of that would be the records.

Mr. Adcock: I think he knows. He operates these 949 theatres.

The Court: If he knows. Of course if he does not know he cannot answer the question.

The Witness: I don't know.

The Court: That is the answer.

Mr. Adcock: Will you look that up?

The Witness: I will.

Mr. Adcock: Q. Take the next one that was mentioned, the Norshore, and indicate the changes and the reasons.

A. Norshore?

Q. Yes.

A. In 1930 the Norshore was playing in B week. In 1931 B week, and double featuring with the beginning of March of that year. Continued double featuring until the beginning of October of 1932, still in B week. In 1933, November 20th, moved to C week. Played C week in 1934 1933, '34, '35 and '36, until November the 28th, going double feature at the same time. Remained in B week to date

Q. And what was the reason for the change from B to C?

A. The same reason as the Harding and Granada.

950 Q. And the reason for the change back to C week?

A. The same reason.

Q. Another theatre that was mentioned was the Nortown. Will you give the changes there on that theatre?

A. The Nortown Theatre was not opened until April 4, 1931. Played C week, C North Side, single feature. October first, 1932, still playing in C North. In 1933—October 1st, 1932, played in B week. 1934, C week. 1935, C week. For the year 1936 played both B and C, part of the time B, part of the time C. After April 10th started playing double feature November 27, 1936, after which it played in C week until 1939. Went to C week January 22nd and back to B week March 29th of that year. Is still in that week.

Q. Do you remember what the occasion was for moving, in 1939, back to C week, and back to B week for a short time?

A. Yes. It was done to determine the effect of the backward playing position, only it is an A theatre.

Q. Take the Oriental. Mr. McConnell asked you

951 about that.

A. The Oriental Theatre played—I imagine they mean first run. It says "Loop."

Mr. Adcock: Yes.

The Witness: The years 1930, '31, '32 and '33, played first run Chicago. 1934, March 2nd, went to B week. Stayed in B week 1934, '35, '36, and back to first run February 2nd, 1937, and closed May the 26th, 1938.

Q. What was the occasion—was the occasion for its change from Loop or first run to B substantially the same as you have mentioned as to the other theatres coming down?

A. Yes.

Q. The Pantheon?

A. The Pantheon Theatre played in C North in 1938, double featured, January 25, 1931, C and B. C North in 1932. C week in 1933, '34 and '35. C week in 1936. Double featured Christmas Day 1936, and played in B week starting January 22, 1937. Stayed in B week in 1937, 1938, moved back to C February 3, 1939, and back to B, February 4, 1939. Now in B week.

952 Q. Now, was the occasion for those changes the same as you mentioned for the other theatres?

A. Yes, sir.

Q. Take the Regal Theatre that Mr. McConnell asked you about.

A. The Regal?

Q. Yes.

A. In 1930, in B week. 1931 B week, double featuring May 2nd. Back to singles October 5, 1932, in B week. 1933, '34 and '35 in C week. 1936 in C week, starting double features December the 25th. Went to B week October 8, 1937, and has remained there.

Q. The occasion for those changes was—

A. The same as the others.

Q. The Riviera?

A. The Riviera Theatre played in A week in 1930, '31. Went double feature May 1st, 1931, single features September 30, 1932, in A week. Went to B week in 1933, May the 27th. Remained back in B week until June 12, 1936. Moved into A week, double featuring, November 20th of that year. Played in A week in subsequent year.

953 Q. The occasion for the change in run was the same as the others?

A. Yes.

Q. The State-Lake?

A. The State and Lake Theatre was—the building was purchased by us, opened as a C theatre December 24th. Had been closed.

Mr. O'Brien: What year?

The Witness: I don't know—sometime during the depression, 1932 or '33, I think—probably earlier than that. It had been running as a first run Loop theatre. We opened up in B week with pictures and vaudeville December 24th, 1938, and operated it that way for the year of 1939 and '40, until October 21, 1941. Now it is a first run theatre again.

Q. What is the size of that theatre?

A. It has about 2500 seats.

Q. Is that right opposite the Chicago Theatre?

A. The Chicago Theatre.

Q. What was occasion for moving that into the Loop or first run?

A. Well, during the depression attendance in the Loop

was very limited. There was not sufficient product to keep all of the theatres running in first run, excepting some
954 secondary product that was used with vaudeville in B week at the State-Lake.

Q. Is there vaudeville used in that theatre?

A. Not now.

Q. The Tower Theatre?

A. Tower Theatre was in A week in 1930, double featured April 3, 1931, in A week; single featured September 30, 1932, in A week, and on August 13, 1933, played in C week. Played there through 1934 and '35, and in 1936 played in B and C. Moved up to B about, it seems like it was on October 30, 1936. Went double features November 24, 1936. It is now playing in B week.

955 Q. The Varsity Theatre, will you indicate the changes in the Varsity?

A. In 1930 played in B and C; 1931 started double featuring in May; single featured in October, 1932, playing in B week, B week, B week through until July 16, 1937. Started double featuring June 28, 1937. Is now in A week; has played in A week since that time.

Q. What was the occasion for that theatre moving from A—changing from B to A week? How did that come about?

A. It seems that they did not have Sunday movies in Evanston about the time that the theatre ran in B week. I don't recall when, but we were granted the privilege of running movies on Sunday, after which, of course, the people in Evanston were complaining about the run of the theatre,—they wanted pictures earlier in Evanston. After Sunday movies the pressure from the public was greater, as I recall it; we discussed it with the distributors and were successful in negotiating an A run to the theatre. And as I remember it all the runs subject to Varsity clearance were moved up at the same time. Everything moved up and made Evanston happy.

956 Q. How did you carry on those negotiations?

A. Well, I don't recall. I imagine with each individual distributor.

Q. And, in moving from a certain playing position that you have referred to in the other theatres to an inferior playing position, how was that accomplished?

The Witness: I didn't get the word,—superior or interior?

Mr. Adcock: Inferior.

The Witness: Doesn't make any difference. The distributor was consulted, the clearance was waived on the run following that particular theatre and, by the sanction of the distributor, the run was reduced—admission price reduced, and I think in many instances the film rental was reduced.

Mr. Adcock: Q. That is, most of the distributors—

A. After proof of necessity.

Q. Now, the Gateway was also mentioned. There were some changes made there, were there not, in playing position?

A. I didn't hear the question.

(Question read.)

The Witness: Yes.

957 Mr. McConnell: The Gateway was not mentioned in the cross-examination, if the Court please.

Mr. Adcock: All right. Was the Crystal—

The Court: Are you asking about Mr. McConnell's question?

Mr. Adcock: I asked if the Crystal was mentioned.

Mr. McConnell: I don't recall. I recall I didn't say anything about the theatre you asked the question about.

The Court: Mr. Seeley said the Crystal was mentioned.

Mr. Seeley: Yes, I know it was.

Mr. Adcock: Q. Will you give us the same information with reference to the Crystal Theatre?

Mr. Seeley: The Gateway was mentioned, too, according to the list I made at the time.

The Court: Let us talk about the Crystal.

The Witness: 1930 in C week. 1931 in C week, double featuring January 9, 1931. Single featured October 2, 1932, in C week. Played in first week 1933, 1934 and 1935. 1936, C week, December 27th, starting double features at the same time.

Mr. Adcock: Q. Was the occasion for the change in the Crystal the same?

958 A. Yes.

Q. Was there some change in the Gateway playing position?

Mr. McConnell: I object to the Gateway. There wasn't anything mentioned in the cross about the Gateway.

Mr. Adcock: All right, then we will assume there wasn't.

The Court: Sir?

Mr. Adcock: Then we will assume there wasn't anything mentioned about it.

The Court: All right. Let us pass the Gateway. What is next?

Mr. Adcock: Q. In your examination by Mr. McConnell he asked you if the reduction in admission prices in the Loop would reduce the gross receipts from admissions, and your answer, I believe, was that there would be a reduction; is that correct?

The Witness: A. Yes.

Q. What time did you have reference to when you made your answer?

A. Now.

Q. Would there be any different result under other conditions than exist now, from an economic standpoint?

A. Oh, definitely. The economic condition prevail-
959 ing at the time have everything to do with your admissions.

Q. That is they—

A. If you change the price of the commodity you are selling it may or may not increase or reduce the net result.

Q. Then under what conditions would you say that your answer might be "No" to such a question?

A. During the period of depression.

Q. And your answer would be "No" as to that?

A. Definitely.

Mr. Adcock: I am wondering—it is pretty close to four-thirty.

The Court: What do you suggest,—that we take an adjournment to tomorrow?

Mr. Adcock: Well, I thought you were going to in about two minutes.

The Court: Supposing we adjourn until tomorrow morning at ten thirty.

(Whereupon the hearing of the above-entitled case was recessed to the following day, Wednesday, February 23, 1944.)

960 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Florence B. Bigelow, *et al.*,
vs.
RKO Radio Pictures, Inc., *et al.*

Before Igoe, J., and J.

Wednesday, February 23, 1944, 10:30 o'clock A.M.

Court met pursuant to adjournment.

Present:

Mr. McConnell,
Mr. Korfist;
Mr. Adcock,
Mr. Seeley,
Mr. O'Brien.

(And thereupon the following proceedings were had out of the hearing and presence of the jury:)

961 Mr. McConnell: An offer was made here, sort of a stipulation, between counsel as to the facts. It shows the theatres of the different distributors who were involved here, through their exhibiting outlets, that is, the distributors in this case are also exhibitors in different parts—

The Court: Bring the jury in.

Mr. McConnell: (Continuing:)—of the country.

Now, that offer was made to negative any inference here which I think is implied in the statements which both Mr. Seeley and Mr. O'Brien made to the jury, that they are under some coercive situation here. In other words, shows they are bargaining agents because they have buying power themselves.

Mr. Seeley: We object to the admission of that evidence, on the ground that it is immaterial. I do not think it proves anything relative to this case at all. It is evi-

dent there will be no attempt to connect it with anything that was done in Chicago. It is a fact from which I presume counsel would seek to make some argument without there being any explanation of the circumstances, how the
962 fact came to be. It is an issue which we obviously can not go into in this case, neither side. The defendants have no intention to go into it.

Mr. McConnell: Well, it shows that they have tremendous buying power in their own right.

The Court: You charge them with conducting a monopoly here—

Mr. McConnell: Yes.

The Court: (Continuing) —so far as you are concerned.

Mr. McConnell: They are claiming an inference from their argument—

Mr. O'Brien: It has nothing to do with Chicago. If we let this in it will take it all over the United States.

The Court: I think you ought to limit this to the place you live in, here in Chicago. Good morning ladies and gentlemen.

(And thereupon the following proceedings were had in the presence and hearing of the Jury:)

Mr. O'Brien: I would like to make a motion, your Honor, in respect to all of these contracts. They are material for this suit, but we don't want them out in a public record, where they are available to those who have only a monetary interest.

Mr. Adcock: I cannot hear you.

Mr. O'Brien: Who have only a monetary interest, and I am asking that the contracts which were offered and
963 any which may be offered at the end of the trial be filed with the Clerk of the Court, and sealed and impounded by him, or photostats of them, subject to inspection, of course, by any of the parties or their counsel of record. I have shown that to Mr. McConnell, and that is agreeable.

The Court: Very well.

Mr. McConnell: No objection, your Honor.

The Court: Very well. Is that a draft order you have there?

Mr. O'Brien: Yes, sir.

The Court: I think we have a witness on the stand from yesterday.

Mr. Adcock: Where is Mr. Immerman?

The Court: All right, brother Immerman.

Mr. McConnell: If the Court please, before we go further with this witness, for the record, I want to offer these—

Mr. Adcock: I have not finished my examination.

Mr. Seeley: This is another point.

Mr. McConnell: The point we just argued, Mr. Adcock. I want to offer these lists which were offered, and which the Court has ruled on.

964 The Court: Yes.

Mr. O'Brien: We have the same objection.

Mr. McConnell: I think we will mark this Plaintiffs' Exhibit A of this date, so we won't get confused with our other lists.

Mark this 123-A, then. And the Exhibits are offered as Plaintiffs' Exhibits 123 and 123-A.

965 The Court: Who is asking Mr. Immerman some questions?

Mr. O'Brien: Mr. Adcock.

The Court: All right, Mr. Adcock.

Mr. Adcock: There are a few questions I want to ask. I am just trying to get the document I want to ask him about.

966 WALTER IMMERMAN, a witness on behalf of the plaintiffs, having been previously sworn, was examined further and testified as follows:

Cross-Examination by Mr. Adcock (Continued).

Q. You have now in your hand, I believe, Plaintiffs' Exhibit 46?

A. Yes.

Q. You were asked about Exhibit 46 by Mr. McConnell, and you read from various parts of that Exhibit, and you were asked questions about the Exhibit. That is sometimes known as the Metro franchise, isn't it?

A. Yes.

Q. What is there about it; how does it get the name "franchise", use the term?

A. It really is a contract for more than one year.

Q. I see.

A. It is a five year contract.

Q. And that is dated September 1st, 1936, I believe. Did you have anything to do with negotiations for that contract?

A. I negotiated the contract.

Q. That is, with representatives of Metro?

967 A. That is right.

Q. Mr. McConnell asked you about percentage agreements for film rental as to Loop theatres provided in that contract, and I think you read from a certain page or pages.

I would like you to refer to pages 8 and 9; and read the provisions of that contract with reference to other theatres, that is, outside of the Loop.

A. The page captioned, "Houses outside the Loop", reads: "Features. Paragraph 14. Exhibitor agrees to exhibit at each of said houses outside of Loop in each 52 weeks period the number of feature motion pictures specified on the schedule hereto annexed and made a part hereof".

Headed, "Commitment Schedule." "Each such motion picture to be exhibited for the number of days shown on said schedule—"

Do you want me to read the whole page?

Mr. Adcock: Yes.

The Witness: (Reading:)

"It is expressly agreed that as to any theatre whose commitment shown on said commitment schedule is 52 pictures, exhibitor may at its option eliminate pictures up to 25 per cent of such commitment, but exercise

968 of such option by the exhibitor shall not operate to decrease the amount of the guaranty of $429,300 which exhibitor is herein obligated to pay Metro for the license herein granted with respect to the feature motion pictures of each 52 weeks period. Exhibitor agrees to pay to Metro (a) as a minimum guaranty the sum of $429,300, payment thereof to be made in 52 equal weekly instalments, the first instalment to be paid October 15th, 1936, and (b) in addition to said minimum guaranty the following respective percentages of additional receipts realized from the exhibition of said feature motion pictures exhibited in each 52 weeks period. (The term 'additional receipts' being deemed for the purpose of this provision to mean the cumulative gross receipts at all said houses outside

Loop during the exhibition of said feature motion pictures in the respective 52 week period—"

Continuing with the page, shall I continue?

Mr. Adcock: Yes. Then I think there is some more.

The Witness: (Reading:) "—over and above their total cumulative operating expenses on such pictures), 25 per cent of the first ten per cent of additional receipts,
969 30 per cent of the next 10 per cent of additional receipts, 35 per cent of the next 10 per cent of additional receipts, 40 per cent of the next 10 per cent of additional receipts, 45 per cent of the next 10 per cent of additional receipts, and 50 per cent of all further additional receipts.

"Example: Assuming that for the first 52 week period, exhibitor's gross receipts of the exhibition of said feature motion pictures at all of said houses outside of the Loop would have to be one and one half million dollars to cover operating expenses, including said minimum guaranty of $429,300. If the total gross receipts of the exhibition of said feature motion pictures at all of said houses outside of the Loop for such first 52 week period were $1,650,000 or $150,000 in excess, or 10 per cent above the said one and one-half million dollars, then in addition to the said minimum guaranty, Metro would be entitled to $37,500 of such additional $150,000. If the total gross receipts of such period were $1,800,000, then in addition to said minimum guaranty, Metro would be entitled to $82,500, or $37,500—wait a minute. For example, $37,500 of the first additional $150,000, and 45 per cent of the second addi-
970 tional $150,000. And if the total gross receipts for such period were $1,550,000, then in addition to said minimum guaranty, Metro would be entitled to $12,500 of such additional $50,000."

Mr. Adcock: Then I think the last paragraph of that long numbered paragraph, Section 14, relates merely to certain scoring charges—

A. Yes.

Q. (Continuing:) —which I do not think necessary to read.

A. Yes.

Q. Was there some amendment to that provision of the contract that you just read, later?

A. If there was, it would be here.

Q. Do you find it?

A. There is an amendment here as to additional theatres.

Q. That is, as to the outside theatres?

A. Will Rogers—

Q. No, but relating—

A. What I have read?

Q. I think it is the last amendment just before this amendment, just before the body of the contract.

971 A. Dated September 1st?

Q. Yes, 1936. Now, what does that relate to, generally, just in a general way?

It is four or five pages, your Honor. I do not think it is necessary to read it, but I just wanted—

Mr. McConnell: I understand, but I object to the witness characterizing the contract.

Mr. Adcock: Well, then, he will have to read it.

The Court: The witness or the lawyer?

Mr. McConnell: Well, he has asked him to characterize certain provisions of this contract. That is the purpose of his question, "What does it relate to?", what was the effect of it, and the contract speaks for itself.

Mr. Adcock: I am trying to shorten the matter, because I do not think it is very important, because it merely amounts, the portion that was read, with respect to the manner, as I understand it, in carrying it out.

The Court: You are confronted with the same situation Mr. McConnell found himself in when you were on the other side of the question. You didn't want his witness to give his conclusion as to what he thought the contract meant. Now, he is applying the same treatment to you.

972 Mr. Adcock: Well, I thought perhaps we could agree upon it.

Mr. O'Brien: I haven't any more confidence in Mr. Immerman's interpretation than I have—

The Court: What?

Mr. O'Brien: I haven't any more confidence in his interpretation than I have of any other witness.

The Court: He doesn't think so much of you.

The Witness: I heard him.

Mr. Adcock: All right.

Mr. McConnell: I will waive that. Let him go ahead.

Mr. Adcock: Just—

Mr. McConnell: Oh, let him go ahead.

The Witness: Well, I will tell you what it is. It is a detailed outline of the various factors and expenses that are to be used in determining profits from the franchise. Isn't that what you refer to?

Mr. Adcock: Yes.

Q. Then will you turn to page 13? You were asked about clearance provisions of this contract. I would like you to read that, the provision there which relates to the houses outside the Loop. I think it is the first paragraph beginning on page 13.

The Witness: Would you like me to read it?

973 Mr. Adcock: Yes, please.

The Witness: Page 13, second paragraph, as to houses outside Loop.

"It is agreed that clearance as to the pictures of the first 52 week period shall be the same as for the pictures of Metro's 1935-'36 season, the same as shown on clearance schedule heretofore annexed and made a part hereof, and as to each subsequent 52 week period shall (unless the parties hereto mutually agree upon other clearance as to the pictures of the respective 52 week period) be the same as herein provided for."

That is the end of the paragraph.

Q. Will you turn to the clearance schedule that is attached to the contract and referred to, which was just read?

A. I think I have it.

Q. You observe there, opposite the word "Maryland", the letters "B and C", do you not?

A. Yes. "B or C".

Q. "B or C". Do you know the meaning of those letters? Do they refer to B or C run?

A. They do refer to the run, to the pictures.

Mr. McConnell: Well, I think the witness should be 974 permitted to testify here, if the Court please.

The Court: Yes. Let us have the witness testify.

Mr. Adcock: I merely asked a question. I thought I would save time, your Honor.

Q. Did the Maryland ever play in B pre-release run?

Mr. McConnell: I object to that as not within the scope of my cross-examination.

The Court: You may examine him about this document.

Mr. Adcock: Yes.

Mr. McConnell: Yes, but he is now asking him whether

the Maryland Theatre, which I did not examine him about at all, ever played in B or C pre-release weeks.

Mr. Adcock: I asked in respect to B.

The Court: Is that question related to this document?

Mr. Adcock: Yes.

The Court: He may answer.

A. Not to my knowledge.

Mr. Adcock: Q. That is, before the date of that contract, or after, is that right?

A. Yes.

Mr. Adcock: I wonder if I could have Exhibit 45.

Q. You were asked about the meaning of the letters A. L., appearing in the first column. I believe you stated that they meant "Acquired by Lease".

975 A. Yes.

Q. Do you know whether those were long, socalled long term leases, or what was the length of the lease?

Mr. McConnell: I object to that.

The Court: Objection sustained.

Mr. Adcock: Well, he was asked about the subject matter of this document, the chart, and the meaning of these various terms, and I wish to inquire about those. That is part of the subject matter of the examination.

The Court: I understand that, but you are asking him about the terms of a lease. Manifestly the best evidence of the lease is the lease itself.

Mr. Adcock: If he knows whether they are long term leases.

The Court: That means the same thing. That has to do with the lease.

Mr. Adcock: I don't believe that where a witness, like this witness, who is familiar with all those things, has to do with the managing of these theatres, that it would be necessary to bring in every lease to determine how long it was. I am only asking him a general question, whether or not they were long term leases, or short term year to

976 year leases, that is all; and I think that is proper.

Mr. McConnell: Well, I object to it as not the best evidence, and further merely because I asked him what two letters, "A. L." meant, "acquired by lease" certainly does not open up the line of examination as to all of the terms of the lease.

The Court: The objection will still be sustained.

Mr. Adcock: Q. You were asked about various other items here, double features, by Mr. McConnell, I believe, which appears in one of the columns, or certain of the columns, in 1930, '31 and '32, and also in certain columns under the years 1936, 1937 principally, and you stated, I believe, that the "D. F." in 1936 indicated the change of policy from single features to double features at certain dates to which the letters "D. F." applied.

I would like to ask you to state how the change of policy took place so far as Balaban & Katz was concerned.

Mr. McConnell: I object to that, if the Court please, as to how it took place.

Mr. Adcock: All right, I will strike that and ask another question.

Q. What did you have to do with the change of
977 policy from single features to double features in 1936, and the year immediately following?

A. It was the end of the period of depression.

Mr. Adcock: I object to that, and ask that it go out as not responsive. He asked him what he had to do with it.

The Court: Yes. That part of it goes out.

The Witness: I don't understand the question.

Mr. Adcock: What?

The Court: Q. Did you have anything to do in connection with the change of features?

A. I had to arrange—I had to arrange for the film. I had to instruct the various operators of the theatres in the change of their policy; and that is about all.

Mr. Adcock: Q. How was the change of policy,—who decided upon making the change of policy?

A. A meeting of the Execut—

Mr. McConnell: I object to that. That calls for a conclusion, as to who decided something within the organization to which we have no way of finding out.

The Court: Oh, I think what he means by his question is who discussed it and how the change was brought about.

Mr. Adcock: Yes. How was it brought about?

978 A. The result of planning and discussion in our office amongst the executives, between the executives.

Q. For what reason did you change the policy?

Mr. McConnell: I object to that, if the Court please.

The Court: He may answer that. Why was the change made?

A. In an effort to maintain attendance and gross.

Mr. Adcock: Q. Well, was there any situation so far as the bank night, the operation of the theatre under bank night at that time that entered into the consideration, about changing the policy?

Mr. McConnell: If the Court please, this is just testimony by Mr. Adcock, telling the witness about bank night, and all the rest of it. I don't see how it comes within the scope of my cross-examination. I object to the question.

The Court: Well, I think the question is very leading, but—

Mr. O'Brien: This is cross-examination.

The Court: Well, I understand it is cross-examination, too, but there ought to be a limitation on cross-examination.

Mr. Adcock: I am merely directing the attention of the witness to that.

979 The Court: The attention of the witness is pretty well directed toward what answer he wants now, so what is your answer?

Mr. Adcock: Q. What matters did you take into consideration in making your decision to change the policy from single features to double features?

Mr. McConnell: I object to that as not proper cross-examination of a witness examined as an adverse witness.

The Court: He may answer the question.

A. We were facing the elimination of box office stimulation we had during 1935 and '6, called bank night, and during that period, which was the tail end of the period of economic chaos in this country, and we had studied the various methods of box office stimulation through the country and Chicago. We observed double features in Chicago, around us, after our run, as being very successful as a stimulation, so decided to take that course after bank night was eliminated.

Mr. McConnell: Is he through with his answer?

Mr. Adcock: I think so.

Q. Have you finished your answer?

A. Yes.

Mr. McConnell: All right. Let it stand.

Mr. Adcock: Q. Did you have any conversations or
980 understandings with any other exhibitors in Chicago with reference to changing to double feature policy?

A. No.

Q. Did you have any understanding with any distribut-

or or distributors with respect to making that change?

Mr. McConnell: I object to that, if the Court please. That is proof here which he should introduce on his own case.

The Court: Of course that is the difficulty you encounter with this kind of a witness. You bring him on, and under this rule they are allowed to cross-examine him concerning any matter about which you have directly examined him.

Mr. McConnell: That is the reason for the limitation of the rule. I simply asked him to define something, which was a chart, which was already in evidence, what "D. F." meant.

Mr. O'Brien: Now, Mr. McConnell—

Mr. Adcock: You asked him about double features, and asked him when they commenced.

Mr. McConnell: I asked him also—

The Court: To save time, I will let the witness answer the question.

The Witness: I have forgotten the question.

981 The Court: I don't blame you. What was the question?

(Question read.)

A. None except those that might have been necessary to negotiate for the pictures involved in the policy.

Mr. Adcock: Q. Was that taken up with the distributors individually?

A. Yes.

Q. Singly. How long have percentage contracts with reference to licensing motion pictures in some form or another, that is, percentage in some form or another, been in vogue?

Mr. McConnell: I object to that as not within the scope of his examination.

Mr. Adcock: It is within the scope of the cross, of his examination. You called it cross-examination. You have a right to examine the witness by leading questions.

The Court: Somebody asked a question about percentage contracts. I don't recall who it was.

Mr. Adcock: Asked all about it.

The Court: I remember.

Mr. Adcock: If they did not take part—

The Court: Were those questions put to this witness?

Mr. Adcock: Yes.

982 The Court: Then he may answer this question.

A. Will you repeat the question, please?

(Question read.)

A. As long as I have had any contact with the buying of pictures.

Mr. Adcock: Pardon?

The Court: "As long as I have had any contact with the buying of pictures."

Mr. Adcock: Q. You were asked about the reduction in admission prices having a certain effect upon the gross receipts, were you not, by Mr. McConnell?

A. I recall some question.

Q. In operating theatres, what has been your experience as to whether gross receipts from admissions are better in bad times or in good times, so far as later run theatres, having smaller admission prices, are concerned, that is, theatres in first week of general release, and following?

Mr. McConnell: I object to that as not within the scope of the cross. The question that I asked this witness was whether or not, if the admission price was reduced in the Loop that would affect the amount of take at the box office. He answered that question. He was cross-examined on it by Mr. Adcock last night. Now, he is going into the

983 whole field—

Mr. Adcock: No.

Mr. McConnell (Continuing): —of the economic effect on the box office, which is clearly outside the scope of my question.

Mr. Adcock: All I want to ask him is his experience.

Mr. McConnell: I object to the question.

Mr. Adcock: You went into it.

The Court: Do you know what the question is, Mr. Witness?

The Witness: I think he asked—that the question was concerning fluctuations in the box office, in admission prices.

Mr. Adcock: Yes.

The Witness: Under different economic conditions, something like that.

Mr. McConnell: No question involving that was asked on my cross-examination.

The Court: Do you understand the question?

The Witness: Yes.

The Court: He may answer.

A. During the period when the pocket book of the buyer is smaller and shrunken, as far as our entertainment is concerned, he buys it where he can buy it for the least
984 outlay, the lowest amount of admission, and in much larger numbers than during the period when his pocket book is a little stouter. The tendency of the public seems to be to patronize the more select theatres and pay a higher admission price during the period when they can afford it, and during the period, as I said, when cash is a little harder to get, they conserve, and patronize theatres having a lower admission price. That is our experience over a period of twenty years, my experience, rather.

985 Q. You were asked a question as to the interest that the distributor and the exhibitor had in a percentage contract, and I believe your answer was they divided the take in some form or another—maybe the question was put that way—were you not, by Mr. McConnell?

A. I recall some question referring to that.

Q. In this percentage contract was the distributor and the exhibitor, that is the distributor Metro and the exhibitor Balaban & Katz, mutually interested in the theatres covered by the contract playing in the runs most suitable to the respective theatre sizes, character, appointments, location, and ability to draw patrons to them as compared with competing theatres?

A. Yes.

Mr. McConnell: Well, just a minute. Don't I have—well, he has answered the question. Now I move to strike the answer, on the ground that it calls for a characterization of this contract. The best evidence is the contract.

The Court: The motion is disallowed.

Mr. Adcock: Q. Referring to the clearance schedules in this contract relating to the Tivoli, Tower and
986 Maryland, will you read those?

A. You mean in this (indicating Exhibit 46)?

Q. Yes, in this franchise.

A. Tivoli: "This theatre to play in fourth, fifth, or sixth week after the last day of exhibition in the Loop theatre. If this theatre plays in the fourth week after last day of exhibition in the Loop, no theatre except the Southtown and Avalon in the south or southwest portions of Chicago, or in the southern part of Cook County outside of the city limits of Chicago, or in Lake County, Indiana, to play

until fourteen days after last day of exhibition in this theatre.

"If this theatre plays in the fifth week after last day of exhibition in the Loop, no theatre in above mentioned sections except Southtown and Avalon to play until fourteen days after the last day of exhibition in this theatre.

"If the theatre plays in the sixth week after last day of exhibition in the Loop, no theatre in the above mentioned sections to play until seven days after the last day of exhibition in this theatre.

987 "Capitol, Chicago, Gary, Indiana Harbor, and Hammond, Indiana, may play immediately following the last day of exhibition at this theatre. The Southtown and Avalon may play seven days after last day of exhibition at Tivoli."

Q. Now, will you read the clearance provision with respect to the Tower?

A. Tower: "A, B, or C, Jeffery and Maryland not to play before pre-release C week. Jackson Park, Hamilton, and Lexington not to play before first week general. Drexel, Kimbark, Langley and Midway may not play before second week general." That is the Tower.

Q. The Maryland?

A. Maryland. "B or C, Drexel, Langley, Midway not to play earlier than second week general. Jeffrey and Grove to play in same week with Maryland. Lexington, Kimbark, Jackson Park, Frolic, Plaisance and Amo not to play earlier than first week general."

Mr. Adcock: Q. Have you any opinion as to whether those clearance provisions in respect to those three theatres and the provision of the agreement with reference to the playing position is fair and reasonable considering

988 the size, location, the drawing power of the theatres as compared with other theatres in competition with them?

Mr. McConnell: I object to that, if the Court please.

The Court: Objection sustained.

Mr. Adcock: That is all.

Cross-Examination by Mr. Seeley.

Q. Mr. Immerman, when you negotiated with Metro Plaintiffs' Exhibit 46, which we have called the Metro franchise here, did you negotiate solely with Metro or did you

negotiate with some representatives of some other distributor also?

A. Solely with Metro.

Q. Did you at the time have any agreement or understanding with any other distributor about the terms of that contract?

Mr. McConnell: Just a minute. I object to that question. It calls for a conclusion, it calls for a whole branch of the case which is not involved in my cross-examination of this witness.

Mr. Seeley: I don't know—

989 Mr. McConnell: The question if he had agreements or understandings is before the Court.

The Court: You asked him if he had any understanding. That calls for a definite conclusion with respect to a branch of this case, doesn't it? I should think you could ask him what he said or did as far as other distributors are concerned.

Mr. Seeley: All right.

Q. Did you have any communication at any time with any distributor other than Metro about the terms of that Metro franchise?

A. No.

Q. Did you have any communication with any other exhibitor about the terms of that franchise?

A. No.

Q. Now, then did you also have something to do with the negotiations of all these other film contracts which were introduced in evidence yesterday between Balaban & Katz and the several distributors who are defendants here?

A. All of them.

Q. What did you have to do with them?

Mr. McConnell: I object to that. That is not within the scope of my cross-examination. That is on their own case.

990 Mr. Seeley: Why, he introduced them through this witness.

Mr. McConnell: Oh,—

The Court: He may answer the question.

Mr. Seeley: Q. What did you have to do with the negotiations of those agreements?

The Witness: To start and finish.

Q. You yourself actually participated in the negotiations did you?

A. Myself or those delegated by me—my final approval.

Q. If you did not negotiate it yourself were the contracts submitted to you before they were signed?

A. Yes, sir.

Q. In the negotiation of any of those contracts with a distributor did you deal individually with that distributor alone?

Mr. McConnell: I object to that. That calls for a conclusion and that is the whole evidence in the case. From this evidence here that calls for a conclusion by the Court.

The Court: He may answer.

The Witness: Did you ask me if I dealt—

991 Mr. Seeley: Q. Did you deal individually with that distributor alone?

A. Yes.

Q. Did you have any communication about the terms of any of those contracts with any other distributor?

A. No.

Mr. McConnell: That calls for a conclusion.

The Court: The answer may stand.

Mr. Seeley: Q. Did you have any communication with any other exhibitor about the terms of those contracts?

Mr. McConnell: I object to that for the same reason.

The Court: He may answer.

The Witness: A. No.

Mr. Seeley: That is all.

Mr. O'Brien: I have just a couple of questions.

992 *Cross-Examination by Mr. O'Brien.*

Q. You mentioned that some of your houses were double featuring in 1931?

A. Yes.

Q. And was everybody else at that time?

Mr. McConnell: I object to what everybody else was doing.

Mr. O'Brien: Well, I am asking him and cross-examining him.

Mr. McConnell: Well, it isn't within the scope of my cross.

Mr. O'Brien: Well, let's get that straight so we don't have these interruptions. It has been about six times now.

The Court: The objection is that it is not within the scope of the cross, "what did everybody else do."

Mr. O'Brien: I asked him wasn't anybody else double featuring at that time. Is there any question about it?

Mr. McConnell: Well, I object to the question.

The Court: By "everybody else," what do you mean?

Mr. O'Brien: Every other house in Chicago.

The Court: Oh, that is different.

Mr. O'Brien: Sure.

The Court: He may answer that question.

Mr. O'Brien: Q. What is the answer, sir?

993 The Witness: A. The answer is yes and no. Yes, insofar as houses not operated by ourselves is concerned, and no as to some of the theatres we operated. We did not double feature in all the theatres we operate in.

Mr. O'Brien: Q. Was Jackson Park double featuring in 1931?

A. I don't recall specifically whether Jackson Park did or not.

Q. Now, Mr. McConnell asked you how much rent you were paying on the Maryland, or did pay in each of the years 1936 to 1942, and about the lease on the Maryland. Is that lease for a term of years which includes that period or is it on a year to year basis?

Mr. McConnell: I object to the terms of the lease as not the best evidence.

Mr. O'Brien: Well, you had the same ruling in your favor. The question was how much rent did he pay and somebody said the lease was the best evidence and the Court said he should answer if he knew, and he told what rent.

Mr. McConnell: The difference was that he was reading from a document in evidence.

994 Mr. O'Brien: He was not reading.

Mr. McConnell: Yes, he was.

Mr. O'Brien: Not from a lease. He was reading from a memorandum, and he also knew what rent they pay, and I am asking for the term of that lease.

While on the subject, Mr. McConnell had this gentleman testify. He could have read the deposition like the others, but he put him on the stand to convey certain impressions to the jury and now every time we seek to ask him one of those questions he has an objection.

The Court: At least I take it it is available sometime.

Mr. O'Brien: Sure it is.

The Court: A short term lease or a long term.

Mr. McConnell: He can put that in on his own case, if the Court please, that lease.

The Court: Listen, listen, brother. Answer the question. Let us stop this argument.

The Witness: That was a long term lease and was for a period of fifteen years.

Mr. McConnell: I move to strike the witness' answer as not the best evidence.

The Court: The answer may stand.

Mr. O'Brien: Q. Now, during the depression, 995 whenever it was that you moved these theatres back, I take it that the people were not attending in large numbers and were unable to pay the existing admission prices, is that correct?

Mr. McConnell: I object to the leading nature of the question.

Mr. O'Brien: This is cross-examination.

Mr. McConnell: This is his own witness.

Mr. O'Brien: It is not. Your Honor, the rules provide that he calls him on direct and asks him leading questions because he is an adverse witness. The rules also provide that I can cross-examine and I am now cross-examining and not examining him on direct, and I have a right on cross-examination to ask leading questions.

Mr. Adcock: The rules specifically state cross-examination on the subject matter of the direct examination.

The Court: The objection is overruled. He may answer the question.

Mr. O'Brien: Q. Do you know the question?

The Witness: I don't recall the question.

Mr. O'Brien: Read it.

(Question read as follows:)

996 "Q. Now during the depression, whenever it was that you moved these theatres back, I take it that the people were not attending in large numbers and were unable to pay the existing admission prices, is that correct?")

The Witness: Unable to or unwilling, that is correct regarding the drop of high attendance or high admission prices during that period.

Mr. McConnell: I move to strike that. He has testified as to what somebody was unwilling to do.

The Court: He said they did not patronize, but he did

not know whether they were unwilling or unable to pay the price. I think that answer may stand.

Mr. O'Brien: Q. And under the same conditions the Jackson Park or any other subsequent run house could move back, could it not?

Mr. McConnell: I object to that, if the Court please.

The Court: I don't think in his direct examination he put this man on as an expert, did he?

Mr. O'Brien: Well, he surely is an expert.

The Court: Well, you may make him your expert, but not on direct examination was he an expert. The objection is sustained.

Mr. Adcock: He did not put him on as an expert.

997 The Court: I understand, and you cannot make him an expert.

Mr. Adcock: Well, but he showed by his examination that he was an expert.

The Court: I understand, but he is not put on as an expert. He called him for certain purposes on direct examination. The objection to this question is sustained.

Mr. O'Brien: All right, I will withdraw that, let the question go. I am now not asking for an opinion; I want to know if as a fact, whether he knows from his experience in the business that under those conditions any subsequent run house could move back.

Mr. McConnell: That is still opinion evidence.

Mr. O'Brien: It is not.

The Court: It is the same question dressed up in different language. You can put that on in your case when we come to that point in this case.

Mr. O'Brien: Q. You mentioned some house up north which moved up at the same time the Varsity did. Can you name those or any of them, Mr. Immerman?

Mr. McConnell: I object to that, if the Court please.

Mr. Adcock went all over those changes, and each
998 counsel have a right to go over the same subject matter with this witness?

The Court: I don't know what would prevent it. Each is in here representing certain defendants, and I suppose he wants to take care of the interests of the defendant he represents. So I don't know why it should not be done.

Mr. O'Brien: I will withdraw that question. Just let us see whether it is the same subject matter.

Q. Mr. Immerman, did you name any of the theatres

up north which moved up at the same time the Varsity did, at the time you testified here?

A. No.

Q. I now ask you to name them.

A. Well, a theatre in No Man's Land called the Theatro Del Lago, a theatre in Wilmette called the Wilmette, and I don't recall the names of others. There were others.

Q. How about the Alcyon?

A. That was one.

Q. The Highland Park?

A. Yes.

Mr. O'Brien: I think that is all.

Mr. McConnell: I have one question to ask on that last question.

999 *Redirect Examination by Mr. McConnell.*

Q. Who owns the Teatro Del Lago and the Wilmette Theatres?

A. The operation is directed by Sam Meyers. I think he owns all or part of them.

Q. He is related by marriage to Mr. Balaban, is he not?

A. One of the Balabans.

Mr. McConnell: That is all.

Mr. Adcock: I want to ask a question.

Recross Examination by Mr. Adcock.

Q. Do you know whether the relationship between Mr. Balaban, one of the Balabans, and Sam Meyers is cordial or not?

Mr. McConnell: Oh, I object to whether it is cordial.

The Court: The objection is sustained.

We will take a recess at this time for ten minutes.

(Witness excused.)

1000 (After the recess the following further proceedings were had herein:)

Mr. McConnell: I asked Mr. O'Brien to produce a contract which he was going to have for us.

Mr. O'Brien: I just telephoned. They have them altogether and they are on their way down. It is just from Thirteenth and Wabash.

The Court: All right.

Mr. O'Brien: They will be right here.

In the meantime, I have all of the film rentals except on the Capitol and the Stratford, which will be down with the contracts, and, if you care to, I can give you the film rentals, by year, and read them into the record.

Mr. McConnell: Well, we might as well do it that way.

Mr. O'Brien: I vouch for the figures as being figures which were submitted to me by the client in response to your request.

I may say, at the outset, that these figures are for our fiscal years, they are not the calendar years, but each runs to August 31st, that is, it is from September 1st to August 31st, and the figures, accordingly, are for those fiscal years, starting with 1936, the fiscal year of 1936 and
1001 the other years.

On the Jeffery Theatre:

For the year 1936,	$40,058.24
For the year 1937,	41,944.04
For the year 1938,	43,981.02
For the year 1939,	43,863.70
For the year 1940,	45,699.96

That is as far as the Chicago records—the other figures are later years and I would have to get them from New York, if you are interested in later years.

On the Avalon:

For the year 1936,	$ 78,337.24
For the year 1937,	106,399.52
For the year 1938,	106,722.99
For the year 1939,	105,152.18
For the year 1940,	110,446.35

On the Grove:

For the year 1936,	$34,891.14
For the year 1937,	42,459.41
For the year 1938,	35,443.12
For the year 1939,	32,540.06
For the year 1940,	33,474.04

1002 On the Hamilton:

For the year 1936,	$12,580.21
For the year 1937,	14,083.31
For the year 1938,	14,707.49
For the year 1939,	15,180.94
For the year 1940,	15,862.00

On the Shore:

For the year 1936,	$28,272.00
For the year 1937,	32,478.65
For the year 1938,	31,954.60
For the year 1939,	31,578.56
For the year 1940,	27,878.50

1003 Mr. O'Brien: I will have, as I say, the other two when they bring them down.

Mr. McConnell: Have you your rental figures, Mr. Adcock?

Mr. Adcock: I haven't them here, but I will have them at 2:00 o'clock. You wanted the rental figures for the Loop and Tower and Tivoli. I think probably they are in my office now.

I wanted to ask Mr. Salkin some further questions on cross-examination.

The Court: You want what?

Mr. Adcock: I want to ask Mr. Richard Salkin some further questions on cross-examination.

The Court: Is there any objection?

Mr. McConnell: The witness has been here and been through his testimony.

The Court: Sir?

Mr. McConnell: The witness has been here and been on the stand and we have closed with the witness. I don't know why he should be recalled.

The Court: If he says this is something he forgot to ask at that time, I think he should be accorded that privilege.

Mr. McConnell: All right.

The Court: Take the stand, Mr. Salkin.

1004 RICHARD SALKIN, a witness produced on behalf of the plaintiffs, having been previously sworn, resumed the stand and testified further as follows:

Further Cross-Examination by Mr. Adcock.

You remember in your examination, Mr. Salkin, testifying with reference to playing positions and clearance of different theatres in Chicago, including the Jackson Park?

A. Yes, sir.

Q. On the South Side of Chicago and in the vicinity of Jackson Park Theatre?

A. Yes, sir.

Q. You also testified as to the so-called release system or exhibition of motion pictures, did you not?

A. Yes, sir.

Q. And that that had been in existence for a number of years, at least since 1927, and is in existence now, is that right?

A. Yes, sir, I did, sir.

Q. Was the only objection to that release system which you had or have made to distributors, your inability
1005 to obtain contracts for licensing pictures, whereby the Jackson Park Theatre would play in a week ahead of the week it played in, its first week of general release, that is, C week?

Mr. McConnell: I object to that question, if the Court please. It is involved and involves a summary of evidence, which is not correct.

The Court: Do you understand the question, Mr. Witness?

The Witness: Yes, sir.

The Court: Can you answer?

A. I was always trying to better my playing position, and trying to get a better playing position to do more business.

Mr. Adcock: Q. That was the only objection you ever made to distributors in regard to that, releasing of motion pictures for exhibition in your theatre?

Mr. McConnell: I object to that. It is asking him to characterize his whole testimony here.

The Court: The objection is sustained.

Mr. Adcock: Q. Did you ever ask any distributor for the right to charge admission price less than the admission price that applied to the first week of general
1006 release under this so-called system of clearance that you testified about?

A. No, I never asked to change my admission price.

Q. I can't hear you.

A. No.

Q. You never did. Did you ever make any objection to any distributor with respect to the so-called release system which you testified to?

Mr. McConnell: I object to that, if the Court please.

That characterizes what he did in the whole case. He testified to that.

The Court: Yes. I think that sort of question comprehends a complete summation of what his testimony amounts to.

Mr. Adcock: Oh, no.

The Court: If you ask what he said or did, all right; but putting this question to him, it sums up his entire testimony. The objection is sustained as to that form of question.

Mr. Adcock: I am asking him merely if he made any objection to any distributor.

The Court: Ask him what he said or did. I don't know just what conclusion you want to establish by the word "objection."

1007 Mr. McConnell: If the Court please, this witness was cross-examined at length by three counsel. Now we are going back over it again.

The Court: The objection to that form of question is sustained. I thought you wanted to ask him some question you forgot to ask on cross.

Mr. Adcock: I ask that this document be marked Paramount-Balaban & Katz Exhibit 2 for identification.

(Said document so marked by reporter.)

Q. I show you a document which has been marked Paramount-Balaban & Katz Exhibit 2 for identification, and ask if your signature appears on that document.

The Court: What was the question? Is that his signature?

Mr. Adcock: Yes, sir, if his signature appears there.

The Witness: Yes.

Q. Where does it appear?

Mr. McConnell: I object to where it appears. It appears on the document.

The Court: I take it, that is where it appears?

The Witness: A. Yes, sir.

1008 Mr. Adcock: At the end of the document?

A. No, it does not—

Mr. McConnell: I object to examining this witness on a document that is not in evidence.

Mr. Adcock: Q. Your signature does appear there, does it?

The Court: He said it is there.

Mr. Adcock: Q. Does anybody else's signature appear on that document?

Mr. McConnell: I object to examining him on the contents of a document that is not in evidence.

The Court: He is asking him to identify another signature. Is there another signature there?

The Witness: A. Yes, a lot of independent exhibitors around here.

Mr. McConnell: I move that his answer go out as not responsive.

Mr. Adcock: I think it is material to the question we are asking about. I don't think it is proper to have it go out.

Mr. McConnell: It is not responsive.

Mr. Adcock: Q. Were those signed—

The Court: Wait. The question was, what are the signatures? The answer was, "Signatures of independent exhibitors." Is that the answer?

1009 Mr. Adcock: Yes.

The Court: Q. Do you know the signatures of those people?

The Witness: A. No, just the names.

The Court: The answer may go out.

Mr. Adcock: Q. Do you know any of the signatures?

A. No, I don't, sir.

Q. Do you remember that when you signed the document, there were several names appeared ahead of your signature, which purported to be the signatures of different people?

A. Yes, they purported to be signatures—

Mr. Adcock: I can't hear you.

A. Yes, sir.

Q. Did you ever see the document after you signed it?

A. I don't recall, sir.

Q. How did you happen to sign it?

Mr. McConnell: I object to how he happened to sign it.

The Court: He may answer.

Mr. McConnell: I object to it for the further reason that this is a document which apparently Mr. O'Brien examined the witness on, and it appeared it was a

1010 date back in 1933, or three years before the plaintiffs acquired the theatre; at which time Mr. Salkin was not an agent or in any way representing the plaintiffs in this case.

Mr. Adcock: I am not asking it for that purpose. I have another purpose entirely.

Mr. McConnell: Whatever it is, it cannot be binding on the plaintiffs.

Mr. O'Brien: You mean you cannot impeach one of the plaintiffs' witnesses?

Mr. McConnell: You have not impeached him.

Mr. O'Brien: That is what you are in the process of doing, having him impeached.

Mr. McConnell: I ask that the statement to the jurors may go out.

The Court: That statement may go out. If that is the purpose of the questions, I would not have allowed them. I thought Mr. Adcock forgot to ask certain questions. Apparently you folks are getting together now in an attempt to impeach the witness, and I think I will conclude the cross-examination. You can impeach him on your own time.

Mr. Adcock: I ask that he identify the document.

The Court: It is identified. I did not think that 1011 was the purpose of the question.

Mr. Adcock: That was the purpose.

The Court: You did not say that was the purpose.

Mr. Adcock: I know I did not state the purpose of the question.

The Court: Of course not. Otherwise he could not be put back for that purpose. The cross-examination will be concluded at this moment. I don't understand how you are proceeding here at all.

Mr. Adcock: This document is the original document.

The Court: I understand it is the original document, but you asked this witness to go back on the stand to ask him some question you forgot; and now, apparently between you and your colleagues, you are evidently trying to impeach the witness.

Mr. Adcock: I intended to ask that when I was cross-examining him, your Honor, but I did overlook it.

The Court: All right. Do you object to further cross-examination?

Mr. McConnell: Yes, I do, your Honor.

The Court: The objection is sustained.

Mr. O'Brien: I would like to make a point here, your Honor—

The Court: You what?

Mr. O'Brien: I would be willing to discuss it out of the presence of the jury.

The Court: We may discuss it after the jury leaves the room, but cross-examination is concluded.

Mr. Adcock: I would like to take it up now with your Honor, for the purpose of discussing the document outside the presence of the jury, and the question as to whether or not I should have opportunity to go further with it. I think it is important.

The Court: The jury may be excussed until 2:00 o'clock.

(Whereupon the following proceedings were had outside the presence of the jury:)

Mr. Adcock: If your Honor please, I certainly did not intend anything improper, because it is a matter merely of getting the thing before your Honor, the question of the contradiction of the witness's statement by a document which he signed on March 4, 1932. May I have it?

(Counsel is handed document.)

It is a document which came into my hands in this way: I did not know I had it until some time here a few weeks before this trial started. It came to my hands from the result in the Astor case. I find that it is a document which contradicts the testimony of this witness with reference to his position, with reference to this clearance system.

The Court: If you had it two or three weeks before this trial, why didn't you use it when he was on the stand?

Mr. Adcock: Your Honor, I gave Mr. O'Brien a copy, and he started to identify it without my knowledge. That is true, is it not?

Mr. O'Brien: Yes, that is right.

Mr. Adcock: I felt that the original should be identified,—the document in my possession. I did not know what to do about it. I intended to take it up when I cross-examined the witness, and didn't do it, and then I felt I had to do it before these plaintiffs close their case.

The document is important, and I would like your Honor to look at it; and if the proper foundation has got to be laid, as I understand—

The Court: You laid it. He has identified it.

Mr. O'Brien: That is not enough.

Mr. Adcock: I don't think so, your Honor.

The Court: How much further would you go in cross-examination?

Mr. Adcock: Where you use a document,—not to impeach, your Honor. We don't use the document to impeach.

The Court: That is what you used, "to impeach."

Mr. Adcock: I did not use the word "impeach."

The Court: O'Brien used it.

Mr. Adcock: To contradict the statement of the witness does not necessarily impeach him in the sense you impeach—

The Court: How much further would you have to go?

1015 Mr. Adcock: I have to ask a question as to whether or not he made the statement to which I wish to call his attention.

The Court: Are you allowed to do that on cross-examination?

Mr. Adcock: Yes, your Honor.

The Court: To read from a document?

Mr. Adcock: Yes.

The Court: You are? Is that the way evidence is introduced, or don't you ask him to identify the document later on in your own case?

Mr. Adcock: You must ask whether or not he made the statement that is contained in the document. If he does say, "Yes, I did", that ends it.

The Court: How can you ask that when the document is not in evidence?

Mr. Adcock: He has identified it as something of his own.

The Court: But it is not in evidence.

Mr. Adcock: You have a right to use it for the purpose of contradiction.

The Court: There is no question but that you have a right to do it, but you have to do it under certain rules, you can do it in your case when he is on the stand, 1016 but not when the plaintiffs are putting in their case.

Mr. Adcock: I am not putting in my case now. If you read a letter to somebody and he makes a statement in it and testifies contrary to the statement contained in the letter, you have a right at the time and must call the witness's attention to it at the time he gives his examination. You must call his attention on cross-examination to that, and ask if he made the statement.

The Court: If you say that is the rule,—Do you agree that that is the rule?

Mr. McConnell: I certainly do not, your Honor. You impeach him with the document in your own time.

Mr. O'Brien: I have cases on it, your Honor. I went into it last night. That was the ruling, that the document should be put in evidence as part of our case; but I found that unless you ask the witness as to whether or not he made those statements, unless he denies it, you never have occasion to offer or have the document received in evidence. He must say: "No, I did not."

The Court: You mean you can read from the document—

Mr. O'Brien: You have to ask him if, upon that
1017 occasion, he did not say thus and so.

The Court: That is true in a deposition, but this is an agreement.

Mr. O'Brien: It does not matter whether it is a deposition or a letter.

The Court: That is a simple thing to arrive at,—that conclusion. If you have law to support it, that is the answer.

Mr. McConnell: As I understand the law, if the Court please, as to the use of an impeaching document, you can identify the document as the witness testifies. If you want to impeach, you offer it in evidence on your side of the case. If you want to examine a witness on a document, it must be in evidence.

The Court: I thought that was the law. These gentlemen say that I am wrong, that is not the law. You evidently have some cases on it, you say?

Mr. Adcock: It is done when he is testifying. You then offer it in evidence and it is part of the cross-examination. Then you have a right to read anything from the document.

The Court: Just a minute. It ordinarily is not done the way you suggest.

1018 Mr. Adcock: It is sometimes done.

The Court: That is probably the exception.

Mr. Adcock: It would be unfair to the witness not to call his attention to the things which you say contradict him.

The Court: If you show him the document—

Mr. Adcock: I have, but I have not asked whether he made those statements.

The Court: You say you have cases to support your

position. If so, that is the answer. You cannot disagree with the law. If that is the law, I have to follow it. Where are those cases?

Mr. Adcock: I haven't them here now.

Mr. O'Brien: Suppose we bring them in later.

The Court: All right.

Mr. McConnell: I want to say further on this, but probably I should not. It is quite apparent here that they are trying in some way or other to get something before the jury, something Mr. Salkin did with reference to admission prices long before the plaintiffs acquired the theatre. That is highly prejudicial to the plaintiffs. They are trying to get before the jury some agreement Mr.
1019 Salkin had before they were here, which the plaintiffs don't—

The Court: I don't know.

Mr. Adcock: Now that counsel has made the statement about what it contains, I think it is fair to state it is a document which sets forth the clearance system described here. You see it there, and its states,—different people who signed this, including Mr. Salkin:

(Reading) "I/we believe it is for my/our best interest in the conduct of my/our business, and for the preservation and protection of the life of my/our theatre(s) to be governed and regulated in the operation of my/our theatre business by the following playing position schedules, rules and regulations:

"I/we hereby express my/our desire to have each of the rules, regulations and playing position schedules contained herein to be adopted as general trade practice for the theatres located in the City of Chicago."

Chicago houses and number of subscriptions, which I won't read. (Continuing reading:)

"or in any other city, town or village located in the territory known in the industry as Chicago city release**."
1020 That is the one thing this lawsuit is about. It is the thing that was planned about and set out to be a conspiracy, as Mr. McConnell stated in his opening statement, and also in various arguments.

Here is the release system. I will show it to your Honor. I will not try to read it. That is referred to in that paragraph.

The Court: He takes the position that this particular document existed several years before the plaintiffs came

into the picture. If it is not binding on this witness, it is not binding upon the plaintiffs.

Mr. Adcock: I am not offering it as an admission against interest, as far as they are concerned: merely to show a contradiction of Mr. Salkin's testimony.

The Court: In what respect?

Mr. O'Brien: I asked Mr. Salkin when he was on the witness stand, if he did not think this release system was wrong from the time he came to the Jackson Park Theatre in 1937. He said he always thought it was wrong. I asked him whether he thought the principle of a minimum
1021 admission price was good or bad. He said he always thought that was wrong, that the exhibitors should have a right to charge less, if they wanted to. I wanted to know particularly if he felt that way as to the year 1932. He said yes, he always felt that way.

Mr. McConnell: What Mr. Salkin thinks has no material bearing in this lawsuit. Anything to impeach a witness as to what he thinks, has no bearing as far as the plaintiffs here are concerned.

The Court: Frankly, after all this talk, I wonder how material it is. All this proves is, this man has changed his mind.

Mr. McConnell: He so testified. He said that for a while, he thought he could live under the system, but when he found out he could not get product—

Mr. O'Brien: And that he felt that way before 1932.

The Witness: Yes.

Mr. O'Brien: He admits he said on the stand that he felt that way since 1932.

The Court: If he did, is that binding on the folks here today? Doesn't he even have a right to change his mind?

You want to prove that there was a time in his life
1022 when he felt otherwise?

Mr. O'Brien: Yes.

The Court: We are spending a lot of time on something here. I will see you at 2:00 o'clock. I will see what these cases are that you say will permit you to do this.

(Whereupon a noon recess was had to 2:00 o'clock p. m. of the same day, Wednesday, February 23, 1944.)

1023 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—4525)

Before Igoe, J. and J., Wednesday, February 23rd 1944, 2:00 o'clock P. M.

Court met pursuant to adjournment.

Present: Mr. McConnell,
Mr. Korfist;
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

(Thereupon the following proceedings were had out of the presence and hearing of the jury:)

Mr. O'Brien: If the Court please, I have been able to find over the noon hour the authorities which I was told last night existed, and which to some extent accounted for the recalling of Mr. Salkin for further cross-
1024 examination.

Before I mention those I would like to say that the authorities are Illinois cases, and they use this term in the same sense that I do, as one of impeachment; and the comment at the time before the jury seemed to me, any suggestion that Mr. Adcock and I were in any way colluding on this, or if there was anything offensive about the use of the term "impeachment", I do not think is warranted as far as my clients are concerned. I do not think it was meant that way, but it seemed to me that the jury could not help but get a rather unfavorable impression.

Now, I thought in all sincerity when I put Mr. Salkin on and examined him about the document, that the proper procedure was to reserve that document for admission into evidence on our case if necessary, and therefore I did not ask him about the contents, but Mr. Adcock raised some question about that, and meant to do it himself. All right. Both Mr. Seeley and I felt it could not be done.

Now, I find the law to be this—

The Court: Well, before you get to that—

Mr. O'Brien: Yes.

1025 The Court: (Continuing:)—I take it that this method of carrying on this cross-examination can only be justified upon the theory that some questions were desired to be asked which were forgotten at the time the witness was upon the stand heretofore.

Now, you are going into a subject of which both you and Mr. Adcock admit you had full knowledge at the time the man was upon the stand.

Mr. O'Brien: Mr. Adcock has stated that he meant to examine on that subject, and that inadvertently he failed to ask the questions.

The Court permitted the witness to be recalled.

The matter pending is a question as to whether it is proper at this time, rather than on our own case, to lay a foundation for the admission of this document.

The Court: No, but before you get to that, you get to the point as to whether or not this man should be permitted to be recalled for cross-examination.

Mr. O'Brien: Well, I will answer that directly, if the Court wants my opinion of it for whatever it is worth, by saying, of course, that it is discretionary with the Court, and that where it appears that that is due

1026 in part to a legal error, to a misunderstanding of the need for laying a foundation by calling these matters expressly to the witness's attention, and that that error occurred in good faith, counsel stating that the document would be offered on our case, whereas it now appears that it can not be offered on our case unless the witness first says or denies that he made such statements at that time.

If he admits he made them, then the document never goes into evidence.

The Court: Yes, but don't you think both you and Mr. Adcock would have been in better light, so far as this Court is concerned, if you folks had told me in advance what you were trying to do rather than to ask a few insignificant questions, then coming along with this socalled haymaker. That is the thing I am complaining about: I like to deal openly with people, and I expect people to deal in an equally open manner with me. That is my only complaint.

Mr. O'Brien: I can only say I do not know without the record before me, and in the excitement of what

transpired, I do not recall what was said, but I certainly know that on my part, and I am certainly sure on
1027 Mr. Adcock's part, there was no intention to mislead the Court.

The Court: Both you and Mr. Adcock know the few preliminary questions which were put to this witness were just put for a screen in front, for the purpose of asking this main question.

Mr. O'Brien: I do not think that is so. If we had any such question in mind we would have told the Court.

The Court: That is what the Court is complaining about, that you did not tell him this.

Now, this is the thought you had in mind, and apparently had it in mind for a couple of weeks, as long as this case has been going on.

Mr. O'Brien: That is not so, your Honor.

The Court: Over night you said you looked this matter up. Mr. Adcock said you had this paper before, and you were supposed to ask questions, and did not ask them.

Mr. Adcock: No, there was no—the paper was identified by Mr.—

The Court: And you presumed he was going to ask certain questions.

Mr. Adcock: No, I did not have any presumption about it, I did not know he was going to identify it. I had
1028 the original document.

The Court: But it would have been just as easy for both of you gentlemen to have told me what you were trying to do here, and we could have met the point squarely, without going around a circuitous way.

Mr. Adcock: I want to say this: As far as the preliminary questions were concerned, that I asked this morning, they were preliminary to laying a foundation, and that was all. And as far as cross-examination, it was for further cross-examination. I never thought about referring to the document, never occurred to me. I do not feel—

The Court: We are over that hurdle now. Let us see what the law is here, now, will you?

Mr. Adcock: I am sorry about the misunderstanding.

The Court: That is all right.

Mr. O'Brien: Referring in the first instance to MacNeil on Illinois Evidence, Volume 1, under Cross-Examina-

tion, Section 17,—these are just some notes, your Honor, and then I will come to the main case.

"On cross-examination inquiry may be made as to the statements made by witnesses to others", citing *Warth* v. *Lowenstein*, 219 Illinois, 222.

1029 Next: A witness may be asked on cross-examination if he has not theretofore given a different account of matter to which he has testified, in order to lay foundation for impeaching his testimony by contradicting him.

An in this instance the impeaching testimony would come from the written document, when offered on our case, but unless there is a prior denial, there is nothing to impeach. The case there is *Math* v. *City of Chicago*, 243 Ill. 114.

"A witness may be interrogated as to his conduct inconsistent with his testimony".

Bowe v. *People*, 160 Ill., 438.

There is a case in *Parker* v. *Crane Company*, 185 App. 377, where the Court permitted the witness to be recalled for the purpose of having a foundation laid to support an impeachment.

In *Mary* v. *Werner*, 192 App. 564, the Court held that exclusion on cross-examination of certain questions showing that on a specified occasion the witness had made statements contrary to his testimony in the case, held error.

1030 Next: The credibility of a witness for the plaintiff may be impeached by cross-examining him from a paper as to answers made to an attorney for the defendant on another occasion concerning statements made to the witness by the plaintiff with reference to the merits of the case, 193 App. 387.

And finally: It was not error to attempt to impeach a witness on cross-examination by reading to him purported inconsistent statements to a third person after the transaction involved in the suit, 231 Ill. App. 84.

The case of *Warth* v. *Lowenstein & Sons* is 219 Ill. Supreme Court, 222, which appears in 76 Northeastern, at 379.

There, at page 381, of the Northeastern Report, the Supreme Court said:

"The contention of the appellant, that the Court erred in allowing appellee on cross-examination of Charles Warth over appellant's objection, to question him as to certain statements made by the witness in his deposition taken

prior to the trial, but not introduced in evidence, is without merit. It is always proper, for impeaching purposes, to show that the witness has made prior inconsistent or contradictory statements on material points,
1031 and nothing more was done in this instance." Citing 136 Ill. 317.

Now, your Honor, I must say again because I don't—the Court has ended that discussion in a way, but I want to say to the Court personally that when I put Mr. Salkin on the stand and showed him this Exhibit, and asked him to read it, then asked him to state the circumstances under which it was made, and indicated my willingness then and there to offer it in evidence out of order, if counsel had no objection, I was in entire good faith. I was not holding anything for this stage of the trial. I thought that was the way to do it; and it is only when I find, as I say I did last night, that that is not the way to do it, that unless you have asked the witness whether he said that thing, and unless the witness denies it, you have no occasion to put it in when you get to your case.

If the witness says, "Yes, I said that", that ends it; you never put the document in.

Now, that is all there is to the thing.

On reflection I can see that we should have told your Honor about it, I should have told you, but it never occurred to me that it was anything more than a
1032 motion to your discretion, to put him on.

Once the witness was on the stand, if your Honor saw any objection to that, it is always possible to sustain an objection. It just never entered my head that there would be any such point of view possible to that situation. I can see now what you mean, but I assure your Honor that I was not withholding any document.

The Court might well have refused to let him back on the stand at all. Why would I do a thing like that, deliberately? I was in entire good faith on the point of law, but mistaken.

Mr. McConnell: If the Court please, I think counsel pointed out the distinction here between our case and the one he cites. Contrary statement, yes, because there is no evidence identifying it except by asking what the statement was. But here he can identify the document, the signature to it, he can await his own case and put it in, and the document speaks for itself.

He has not cited any case here which holds you can examine a witness on a document which is not in evidence.

1033 A deposition, yes, a contrary statement, yes, but not a document which can be identified and which speaks for itself and can be admitted on his own side of the case.

Now, that is the distinguishing feature.

The Court: Let's see. I have listened to him. I don't recall that he mentioned a document to me.

Mr. O'Brien: Yes, I did.

The Court: He insists that he did.

Mr. O'Brien: Here. What about this one: The credibility of a witness may be impeached by cross-examining him from a paper as to answers made to the attorney for the defendant on another occasion.

Mr. McConnell: Well, that is where he can not identify the document and introduce it in evidence, then he has to go into it. Counsel stated the rule correctly yesterday afternoon. He said he had to go far enough into it to identify the document. I agree, and he has done it. He has done it, he has identified the document, and he can introduce it on his own case.

The Court: Let us see if he has that case. Now, I do not see a case here yet.

1034 Mr. O'Brien: Here it is: "A witness, under cross-examination, may be questioned as to previous statements made by him in writing without such writing even being shown to him. *Warth* v. *Lowenstein*, 219 Ill. 222."

The Court: Mr. McConnell concedes that is the law. You don't dispute that you can question the witness about statements previously made by him, do you dispute that?

Mr. O'Brien: Made by him in writing.

The Court: Yes, made by him in writing. Do you dispute the fact that they can question him about a contrary statement made by him in writing at a previous time?

Mr. McConnell: Well, the rule is here they can dispute it, but my point is they identify the document, the impeaching document, and introduce it in evidence of their own case. I have a case right here.

The Court: Well, he says that, according to this case, he is not allowed to do that unless he asks the direct question.

Mr. O'Brien: Here is one right on the nose.

Mr. McConnell: I have got an Illinois law. It is right here. I have got the Illinois law.

1035 Mr. O'Brien: So have I. Here is one right on the nose, a Supreme Court case: Statement signed by a witness, actually signed by him. First, Mr. McConnell makes one distinction, and then another. Here is one: Statement signed, which contradicts his testimony—

Mr. Adcock: Just a little louder.

Mr. O'Brien: (Continuing:) "—are not admissible." And I am not offering it at this time, understand. "when, after being read in detail to the witness,"— this is during his cross-examination—"he admits that he made the contradictory statements therein set forth."

Now, as I say, if Mr. Salkin said yes, he made those, I will never get to a point where I can offer the documents. If he denies that he made them, then on my case I must offer the document. That is in 258 Ill., page 152, which holds I can not offer the document itself. Now, during the cross all I can do is lay the foundation to get him to either admit or deny that he made that statement. If he admits it, I never get it in. If he denies it, then the time to put it in is on my case. This is 165 Illinois Supreme.

1036 Listen to that again: Statement signed by a witness which contradicts his testimony are not admissible in evidence when, after being read in detail to the witness on cross-examination he admits that he made the contradictory statements therein set forth.

Now, how in the world would I ever get the chance to admit or deny it during the cross-examination, or you get a chance to lay a foundation to put in the document if you did not ask the witness. He says, yes, he said that at the time, and it is just a question of weight for the jury, or a very slight matter.

The Court: Well, what case have you got in opposition to what he submitted?

Mr. O'Brien: One more case: It was not error to permit counsel, on cross-examination, to read alleged contradictory statements made by the witness from a writing purporting to have been made at the same time.

Then there are framing questions for the purpose of impeachment.

The Court: What is your case?

Mr. McConnell: The first case is *the Chicago City*
1037 *Railway* against *McLaughlin.*

Mr. O'Brien: What is the citation?

Mr. McConnell: The citation of that case is 146 Ill., and I am reading from pages 360 and 361:

"As a part of his original case, counsel for plaintiff below examined a witness named Knight, who was driving a horse-car eastward at the time of the accident, and witnessed the collision which resulted in McLaughlin's death. Upon cross-examination, counsel for defendant questioned Knight as to what he had previously sworn to before the Coroner, referring at the same time to what purported to be a written statement of the testimony theretofore taken before the Coroner's jury."

Now, the Court says about it:

"The questions of defendant's counsel were evidently asked with a view of laying a foundation for contradicting the witness. A witness may be impeached by establishing an inconsistency between his testimony at the trial and the contents of a deposition sworn to by him. The evidence
of a witness taken before a coroner can be used to
1038 contradict the evidence of the same witness subsequently given on a trial in court. But the ordinary rule is, that the deposition or letter or other writing, which is to be used for impeaching purposes, shall be read by the cross-examining counsel as a part of his own evidence when he presents his side of the case."

That is an Illinois case.

The Court: Of course, that is not the rule here today. You can impeach by asking him whether or not a certain question was put to him, and if he did not make a certain answer on a deposition. That is done everyday around here, isn't it?

Mr. McConnell: Well, in a deposition, yes.

The Court: Well, according to that case, you can not do that.

Mr. McConnell: Well, it says it is not the best practice to do it that way.

The Court: That is recognized the best practice here around town at the present time. They do it here every day, and nobody seems to object to it.

Mr. McConnell: I know, they do a lot of things here in the courts. I have seen some awful funny things done during the course of a trial in this town.

1039 The Court: Well, with this pre-trial examination of witnesses here, you have used it in this case, haven't you? You have put men on the stand and asked them if they did not make certain answers to certain questions in a deposition.

Mr. McConnell: I don't think so. Did I? I don't recall it.

The Court: Well, maybe you have not, but it is done here in every other case they try around here.

Mr. McConnell: This other case is the case of Chicago City Railway against Matthieson, 212 Ill. 294.

On cross-examination he was shown a paper and said that the name subscribed to it was his signature. He read the paper and again stated that he signed it. The paper was then offered in evidence, and the Court held that a part of it might be read to the jury, unless counsel for the defendant wished to examine the witness further about it.

Now, the Court said:

"It is further argued that the court erred in permitting the inconsistent statement to be read during the cross-examination of the witness. The proper time would have been when plaintiff presented his side of the case in
1040 rebuttal. It is not a proper method to mingle testimony for the defendant with that for the plaintiff unless there is something to warrant a suspension of the ordinary rule."

Now, the whole purpose of this evidence, if the Court please, is, as you can see, to get something in here indirectly which prejudices the plaintiffs' case. These plaintiffs are not bound by what this man did back in 1932, and it is sort of an indirect sideways approach to the whole thing.

I think that your Honor has discretion here as to how the order of proof should go.

They have identified the document. They have laid the foundation by his testimony that he signed it.

Now, if it is impeaching on their side of the case, all right.

The Court: What do you say to the reasoning in this case that Mr. O'Brien mentioned here, if this document were handed to the witness and he asked him if he made those statements, and he said "yes", then the person offering that document, he is robbed of an opportunity of

presenting it to the jury. Now, it can only be pre-
1041 sented in the event that he denied those statements.

Mr. McConnell: Well, I think I would concede for the purpose of this record, on statements that are already—on questions that are already made, that the witness, if asked that question, whether or not he made those statements at that time, that his answer would be yes.

Now, if that is all the purpose of it, but he wants to read the document to the witness, get it before the jury, then we will never hear any more about the document. Your Honor can see that.

The Court: He has offered to let you introduce the document.

Mr. McConnell: Why should I want to introduce his document?

The Court: I don't know. You say it will never get to the jury. Now, he has offered to put it in now. He did that in his examination, his chief examination of cross-examination.

Mr. McConnell: He can not offer it if the witness says "yes", can he, because if the witness says he made that statement at that time, there is no basis for offering the document; it does not impeach the witness then.

The Court: Well, he does not have to offer it,
1042 because then he will have read to the jury what the statement is, and the witness will have answered it "yes".

Mr. McConnell: Well, there is nothing here in these rules which says he can read the document to the witness. He can let the document be read by the witness, and then ask the witness whether or not he made that statement.

The Court: Well, if that is what this argument was to be about, we need never have had it because I thought we had gotten over that part of his discussion. The witness has already been asked whether or not his name was on the document, and he has answered it is.

Mr. McConnell: That is right.

The Court: That is all there is to it.

Mr. McConnell: That is all his case holds, that the witness shall be permitted to read a document, and then asked whether or not he made the statement. There is his basis for impeachment.

The Court: Whether he made what statement?

Mr. McConnell: That is contained in the document.

The Court: How will the jury know what he is talking about?

Mr. McConnell: Well, he can offer the document, if he says "no". If he doesn't say "No", he is not im-
1043 peached, is he?

The Court: I think under that case that Mr. O'Brien has read, he is permitted to ask that question. I do not think your cases say that he can not do it. That case you referred to there, saying they can not do this by way of deposition, that is being done every day around here.

Mr. McConnell: Then I further object to reading it, on the ground it is not binding on the plaintiffs, and as prejudicial to the plaintiffs.

The Court: Well, that is another proposition.

Mr. McConnell: Yes, and Mr. Korfist points out that is done by Federal Court rule, and we are under State law now as to rules of evidence, and taking of depositions.

The Court: Except where they are changed by our Federal rules here. You are bound by the Federal rules of practice so far as they affect the practice in this court.

Mr. McConnell: But the Federal rules say that the rules of evidence govern.

The Court: Whichever rule is more liberal is the rule we will follow. That is what they say in substance, isn't that correct?

1044 Mr. McConnell: That is correct.

The Court: I think, under that decision Mr. O'Brien has read here, why, this sort of a question is admissible.

Now, find one of the Marshals and bring in the jury, will you please?

1045 (And thereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: All right, Mr. Salkin.

RICHARD SALKIN, a witness on behalf of the plaintiffs, having been previously sworn, resumed the stand, was examined further and testified as follows:

Cross-Examination (Cont'd) by Mr. Adcock.

Q. You have examined this document, Paramount B & K. Exhibit 2, have you?

A. Yes, sir.

Q. I want to ask you whether on or about March 7th, 1932, you made in writing substantially the following statement—

Mr. McConnell: I object to his reading this statement, on the ground that the plaintiffs are not bound by it.

The Court: The objection is overruled.

Mr. Adcock: (Reading:)

"I believe it is for my best interest in the conduct of my business, and for the preservation and protection of the life of my theatre to be governed and regulated in
1046 the operation of my theatre business by the following playing position schedule, rules and regulations. I hereby express my desire to have each of the rules, regulations and playing position schedule contained herein to be adopted as a general trade practice for the theatres located in the cities of Chicago, Chicago Heights, South Chicago, Harvey, Blue Island, Cicero, Berwyn, Oak Park, Maywood, Melrose Park, Forest Park, Brookfield, La-Grange, Downers Grove, Wheaton, Glen Ellyn, Lombard, Villa Park, Elmhurst, Park Ridge, DesPlaines, Evanston, No Man's Land, Highland Park, Lake Forest, in the State of Illinois, or in any other cities, towns or villages located in the territory known in the industry as the 'Chicago City Release Area.'

The schedule rules and regulations referred to, having at the top this heading, "Playing Position Schedule—Rules and Regulations."

I wonder if I could ask somebody to read this? It is a little difficult for me on account of my eyes, to read.

Mr. Seeley: (Reading:)

"1. Playing position schedule

1047 "Minimum adult admission prices for exhibition of not more than one feature picture of 4,000 feet or more in length at any performance."

Loop, Monday to Friday, opening to 2:00 P. M., 35 cents; 2:00 P. M. to 6:30 P. M., 50 cents; 6:30 P. M. to closing, 75 cents.

Saturday, opening to 2:00 P. M., 50 cents; 2:00 P. M. to 6:00 P. M., 75 cents; 6:00 P. M. to closing, 85 cents.

Sunday, opening to 2:00 P. M., 50 cents; 2:00 P. M. to 6:00 P. M., 85 cents; 6:00 P. M. to closing, 85 cents; these figures being under the sub-heading "For theatres exhibiting one feature picture and vaudeville or stage attractions."

A pre-release theatres:

Monday to Friday, to 2:00 P. M., 35 cents; from 2:00 to 6:30, 35 cents; 6:30 to closing, 60 cents.

Saturday, to 2:00 P. M., 35 cents; 2:00 to 6:00, 35 cents; 6:00 to closing, 75 cents.

Sunday, to 2:00 P. M., 50 cents; 2:00 to 6:00, 75 cents; 6:00 to closing 75 cents.

B pre-release theatres:

Monday to Friday, opening to 2:00 P. M., 30 cents;
1048 2:00 to 6:30 P. M., 30 cents; 6:30 to closing, 40 cents.

Saturday, to 2:00 P. M., 30 cents; 2:00 to 6:00 P. M., 30 cents; 6:00 P. M. to closing, 40 cents.

Sunday, opening to 2:00 P. M., 40 cents; 2:00 to 6:00, 40 cents; 6:00 to closing, 40 cents.

C pre-release.

To 2:00 P. M., 25 cents; 2:00 to 6:30, 25 cents; 6:30 to closing, 35 cents.

Saturday, to 2:00 P. M., 25 cents; 2:00 to 6:00, 25 cents; 6:00 P. M. to closing, 35 cents.

Sunday, 35 cents all day.

First week of general release:

Monday to Friday, opening to 2:00 P. M., 20 cents; 2:00 to 6:00, 20 cents; 6:30 to closing, 30 cents.

Saturday, to 2:00 P. M., 20 cents; 2:00 to 6:00, 20 cents; 6:00 to closing, 30 cents.

Sunday, 30 cents all day.

Second week of general release:

To 2:00 P. M., Monday to Friday, this is—to 2:00 P. M., 15 cents; 2:00 to 6:30, 15 cents; 6:30 to closing, 25 cents.

Saturday, to 2:00 P. M., 15 cents; 2:00 P. M., to 6:00
1049 P. M., 15 cents; 6:00 P. M. to closing, 25 cents.

Sunday, 25 cents all day.

Third week of general release:
Monday to Friday, to 2:00 P. M., 15 cents; 2:00 P. M. to 6:30, 15 cents; 6:30 to closing, 20 cents.
Saturday, to 2:00 P. M., 15 cents; 2:00 to 6:00, 15 cents; 6:00 to closing, 20 cents.
Sunday, 20 cents all day.

13th week of release:
To 2:00 P. M., 10 cents; 2:00 to 6:30, 10 cents; 6:30 to closing, 15 cents.
Saturday, to 2:00 P.M., 10 cents; 2:00 to 6:00 10 cents; 6:00 to closing, 15 cents; and Sunday, 15 cents all day.

For theatres exhibiting one feature picture only:
Loop, Monday to Friday, to 2:00 P. M., 35 cents; 2:00 P. M. to 6:30, 50 cents; 6:30 to closing, 60 cents.
Saturday, to 2:00 P. M., 35 cents; 2:00 to 6:00, 50 cents; 6:00 to closing, 60 cents.
Sunday, to 2:00 P. M., 50 cents; 2:00 to 6:00, 75 cents; 6:00 to closing, 75 cents.

1050 A pre-release:
Monday to Friday, opening to 2:00 P. M., 25 cents; 2:00 to 6:30, 25 cents; 6:30 to closing, 35 cents.
Saturday, opening to 2:00 P. M., 25 cents; 2:00 P. M. to 6:00 P. M., 25 cents; 6:00 P. M. to closing, 35 cents.
Sunday, 35 cents all day.

C pre-release:
Through Friday, opening to 2:00 P. M., 20 cents; 2:00 to 6:30, 20 cents; 6:30 to closing, 30 cents.
Saturday, to 2:00 P. M., 20 cents; 2:00 to 6:00, 20 cents; 6:00 P. M. to closing, 30 cents.
Sunday, 30 cents all day.

First week of general release:
Monday through Friday, to 2:00 P. M., 15 cents; 2:00 to 6:30, 15 cents; 6:30 to closing, 25 cents.
Saturday, to 2:00 P. M., 15 cents; and 2:00 to 6:00, cents; 6:00 to closing, 25 cents; and Sunday, 25 cents day.

Second week:
Monday to Friday, to 2:00 P. M., 10 cents; 2:00
1051 to 6:30, 10 cents; 6:30 to closing, 20 cents.
Saturday, to 2:00 P. M., 10 cents; 2:00 to 6:00 10 cents; 6:00 to closing, 20 cents.
Sunday, 20 cents all day.

Third week of general release:

Monday to Friday, opening to 2:00 P. M., 10 cents; 2:00 to 6:30, 10 cents; 6:30 to closing 15 cents.

Saturday, to 2:00 P. M., 10 cents; 2:00 to 6:00, 10 cents; 6:00 to closing, 15 cents.

Sunday, 15 cents all day.

13th week of release:

10 cents at all times. Minimum children's price not to be less than 10 cents at any time above schedule of admission prices. Playing position schedule to apply to all theatres, for all seats on main floor, balcony or gallery.

Do you want more of this read?

Mr. Adcock: That is all I want.

Mr. Seeley: That is all you want read?

Mr. Adcock: That is all I want read.

1052 Mr. Adcock: Q. Do you understand the question?

The Court: What is the question?

Mr. Adcock: I asked him if he—will you read it?

The Court: Just the first part of it.

(Question read by the Reporter.)

The Court: You object to that because at the time this statement was made this witness was not the agent for your client?

Mr. McConnell: Exactly.

The Court: As I understand it, you are introducing this document, or this impeaching question, for the purpose of contradicting this witness concerning a statement he has made about a subject matter which was mentioned in his previous testimony.

Mr. Adcock: That is right.

The Court: That is the only purpose for which it is being offered?

Mr. Adcock: The only purpose, at this time.

The Court: The objection, for that reason, will be overruled.

Mr. McConnell: Just so the jury understands, it is only offered for the purpose of—

The Court: I think we made that about as plain as we could, at the time this statement was made this wit-

1053 ness was not the agent of the plaintiffs in this lawsuit. He has made certain statements upon the stand concerning the subject matter of this lawsuit, and this question is being put to him for the purpose of contradicting the statements he has made in his testimony in chief.

Now, do you understand the question after all that, Mr. Witness?

The Witness: Yes, sir.

The Court: All right. What is your answer?

A. Mr. Aaron Saperstein, head of the Allied Theatres—

Mr. Adcock: No, just a moment. Answer yes or no.

Mr. McConnell: Answer the question yes or no, Mr. Salkin.

The Court: What?

Mr. McConnell: I instruct my witness to answer yes or no.

The Witness: A. Yes.

Mr. Adcock: That is all.

The Court: Is that all?

Mr. Adcock: That is all.

The Court: Have you any questions, Mr. McConnell?

Mr. McConnell: Yes, I want to ask him some ques-
1054 tions.

Mr. O'Brien: I suggest, in view of the answer, that there is no propriety in examining him on the document, obviously.

Mr. McConnell: I did not hear the objection. I was hearing something else.

The Court: He said, in view of the answer to the question that the witness made there is no necessity for your examining that document. I don't quite understand what he means by that.

Mr. O'Brien: I mean examining on it.

Mr. Adcock: Examining the witness about it.

Mr. McConnell: Well, I am going to ask him a couple of questions about it.

The Court: He admitted he signed the document.

Mr. O'Brien: Yes.

Mr. McConnell: He admitted he signed the document.

Mr. Adcock: I think that is all that could be asked.

The Court: What is the question?

Mr. McConnell: I want to see that. I didn't have a chance to look at the document. I have not even looked at the document. I have not had a chance to see how he signed it. Where is his signature?

Mr. Adcock: Second from the bottom, right near the bottom.

1055 *Redirect Examination by Mr. McConnell.*

Q. Did you ever at any time show that document to any of the plaintiffs in this case?

Mr. Adcock: I object.

Mr. O'Brien: I object to it, your Honor.

The Court: He may answer that question.

A. No, sir. I never had the document.

Mr. McConnell: Q. Did you ever discuss with the plaintiffs in this case at any time any of the statements in that document?

Mr. O'Brien: I object.

Mr. Adcock: I object.

Mr. O'Brien: The same objection.

The Court: The objection is overruled. He may answer that.

A. No, sir.

Mr. McConnell: That is all.

Mr. O'Brien: That is all.

Mr. Adcock: That is all.

The Court: That is all, Mr. Salkin.

Mr. McConnell: Wait a minute. Just one more question.

The Court: All right.

Mr. McConnell: Q. You said you started to
1056 give an explanation of the occasion upon which you signed the document. What is your explanation?

Mr. Adcock: I object to that.

The Court: Objection sustained.

Mr. McConnell: All right. That is all.

(Witness excused.)

1057 Mr. O'Brien: You wanted the figures, Mr. McConnell, of the Capitol and Stratford, on the film rental.

Mr. McConnell: Yes.

Mr. O'Brien: I will read these into the record, if that is agreeable, the same as the others.

The Capitol, for the year, the fiscal years I am giving you, 1936, $64,089.38; 1937, $86,330.75; 1938, $95,478.21; 1939, $92,013.22; 1940, $97,346.27.

On the Stratford, 1936, $37,503.20; 1937, $42,279.58; 1938, $42,552.58; 1939, $39,986.26; 1940, $42,883.71.

And I also have all of the contracts between the Warner

Theatres, Warner Vitagraph, Paramount, RKO, and MGM, which is Loew's.

The contracts of Fox are already in. Mr. Seeley produced them.

Mr. McConnell: While these are being marked, can we have the rental figures read?

Mr. Adcock: Yes.

Mr. McConnell: Oh, we cannot do that, though. The reporters have got to write; I am sorry.

You will have to mark these.

(Thereupon said documents were marked Plain-
1058 tiffs' Exhibits 130 to 154, both inclusive, for identification).

Mr. McConnell: I offer in evidence Plaintiffs' Exhibit 130, which purports to be the Warner deal sheets, under date of—for the 1940-41 season.

Mr. O'Brien: No, I do not think so. Does it say that?

Mr. McConnell: Yes.

Mr. O'Brien: Well, they run right through, back to 1937.

Mr. McConnell: With all the distributors.

Mr. O'Brien: No. That is Warner First National.

Mr. McConnell: Between Warner Bros. Theatres and Warners First National.

Mr. O'Brien: Yes.

Mr. McConnell: Deal sheets between Warner Bros. pictures and Warner First National, Warner Bros. Circuit Management Corporation, for the years in question.

Mr. Adcock: What year?

Mr. McConnell: 1936 through to 1942.

I offer in evidence Plaintiffs' Exhibit 131, which pur-
ports to be a folder of contracts between Warner
1059 Bros. Circuit Management and RKO Radio Pictures, for the season 1941 to 1942.

Mr. O'Brien: Some of those are contracts, and some are deal sheets.

Mr. McConnell: I offer in evidence Plaintiffs' Exhibit 132, which purports to be contracts between—a folder of contracts between Warner Bros. Circuit Management Company and Paramount Pictures, for the season 1941 to 1942, apparently.

Mr. O'Brien: Just a minute.

Mr. McConnell: I offer in evidence Plaintiffs' Exhibit

133, which purports to be contract between Paramount Pictures Corporation and the Avalon Theatre.

I offer in evidence Plaintiffs' Exhibit 134, which likewise purports to be a contract between Paramount Pictures Corporation and the Avalon Theatre.

I offer in evidence Plaintiffs' Exhibit 135, which purports to be a contract between Paramount Pictures Corporation and the Grove Theatre for the '41-'42 features.

I offer in evidence Plaintiffs' Exhibit 136, which purports to be contracts between Paramount Pictures Corporation and the Grove Theatre, for the season 1939-'40.

1060 I offer in evidence Plaintiffs' Exhibit 137, which purports to be a contract between Paramount Pictures Corporation and the Hamilton Theatre, for the '40-'41 season.

I offer in evidence Plaintiffs' Exhibit 138, which purports to be a contract between Paramount Pictures Corporation and the Hamilton Theatre, for the 1939-1940 season.

I offer in evidence Plaintiffs' Exhibit, which purports to be a contract between Paramount Pictures Corporation and the Jeffery Theatre, for the season 1941 to 1942.

I offer in evidence Plaintiffs', Exhibit 140, which purports to be a contract between Paramount Pictures Corporation and the Jeffery Theatre, apparently for short subjects, for the years 19— the season 1939 and 1940.

I offer in evidence Plaintiffs' Exhibit 141, which purports to be a contract between Paramount Pictures Corporation and the Shore Theatre, covering short subjects, for the season 1941 and 1942.

I offer in evidence Plaintiffs' Exhibit 141, which purports to be a contract between Paramount Pictures Corporation and the Shore Theatre, covering short subjects, for the season 1941 and 1942.

I offer in evidence Plaintiffs' Exhibit 142, which purports to be a contract between Paramount Pictures Corporation and the Shore Theatre, for feature pictures for

1061 the year 1940 and 1941.

I offer in evidence Plaintiffs' Exhibit 143, which purports to be contracts between Metro-Goldwyn-Mayer for the 1935-36 and 1936 season, for the Chicago Warner zone.

I offer in evidence Plaintiffs' Exhibit 144, which purports to be a contract between—or contracts between

Metro-Goldwyn-Mayer and Warner Bros., 1937-'38 season, for the Chicago zone.

I offer in evidence Plaintiffs' Exhibit 145, purporting to be a contract between Metro-Goldwyn-Mayer and the Avalon Theatre, for the season 1940-41.

I offer in evidence Plaintiffs' Exhibit 146, which purports to be a contract between Metro-Goldwyn-Mayer and the Avalon Theatre, for the season 1940 and 1941.

I offer in evidence Plaintiffs' Exhibit 147, which purports to be a contract between Metro-Goldwyn-Mayer and the Grove Theatre, for the season 1940-41.

I offer in evidence Plaintiffs' Exhibit 148, which purports to be a contract between Metro-Goldwyn-Mayer and the Grove Theatre, for the season 1941-'42.

1062 Mr. O'Brien: I don't want to interrupt you, but you keep saying "a contract", and each one of these folders, practically every one of them, contains numerous contracts.

Mr. McConnell: All right.

Mr. O'Brien: You know.

Mr. McConnell: All right.

I offer in evidence Plaintiffs' Exhibit 149, which purports to be contracts between Metro-Goldwyn-Mayer and the Hamilton Theatre, covering 1940 and 1941 production.

I offer in evidence Plaintiffs' Exhibit 150, which purports to be contracts between Metro-Goldwyn-Mayer and the Hamilton Theatre, for the season, for the 1941-42 productions.

I offer in evidence Plaintiffs' Exhibit 151, a folder which purports to be contracts between Metro-Goldwyn-Mayer and the Jeffery Theatre, covering the season for the 1940 and 1941 product.

I offer in evidence Plaintiffs' Exhibit 152, which purports to be a folder of contracts for the Jeffery Theatre, for the 1941-42 productions, and Metro-Goldyn-Mayer.

I offer in evidence Plaintiffs' Exhibit 153, which purports to be a folder of contracts between Metro-
163 Goldwyn-Mayer and the Shore Theatre, covering 1940-41 productions.

I offer in evidence Plaintiffs' Exhibit 154, which purports to be a folder of contracts between Metro-Goldwyn-Mayer and the Shore Theatre, covering 1941-42 feature productions.

Mr. O'Brien: See, each envelope, this can be verified

and checked later, each envelope contains the contracts from 1936 on, as far as we have them.

Mr. McConnell: I am offering the entire folders under those Exhibit numbers, in each instance.

Mr. O'Brien: It is all right. We have no objection.

The Court: If there is no objection, they may be admitted.

(Said documents, so offered, were received in evidence as PLAINTIFFS' EXHIBITS 130 to 154, both inclusive, and are in words and figures as follows, to-wit:)

1064 Mr. O'Brien: I suggest for accuracy, at the Reporter's convenience there be some closer listing of the number of documents in each of the folders, and I would like to have these photostated when you are through with them.

Mr. McConnell: All right.

Mr. Adcock: You have asked us to produce the film rental for our Loop Theatres, Loop run theatres, for 1937 to 1942, both inclusive. We are doing that. Mr. Goldberg will read the figures in evidence covering that, subject to the objection, your Honor, that we interposed to that yesterday.

The Court: Yes.

Mr. Adcock: And your Honor overruled the objection.

The Court: All right, brother Goldberg, let us have the figures.

Mr. Goldberg: I will give the Apollo Theatre first: 1937, $92,978.30; 1938, $87,342.42; 1939, $93,619.46; 1940, $74,638.92; 1941, $46,179.77; 1942, $131,625.19.

For the Chicago Theatre:
1937, $284,783.95; 1938, $312,097.32; 1939, $307,335.54; 1940, $330,742.40; $344,540.09; 1942, $405,585.56.

1065 For the Garrick:
1937, $60,738.50; 1938, $20,125.20; 1939, $51,302.16; 1940, $57,762.48; 1941, $68,329.06; 1942, $59,335.23.

For the Roosevelt Theatre:
1937, $143,488.21; 1938, $115,382.60; 1939, $100,612.48; 1940, $138,775.84; 1941, $143,570.70; 1942, $198,259.18.

The next Theatre is the State-Lake Theatre. I have no figures for the year 1937, nor for the first 51 weeks of the year 1938, because this information is confined to first run film rentals, and the State-Lake Theatre commenced showing first run pictures again on December 24th, 1938; and

so for the last week in 1938 the film rental for the State-Lake Theatre was $900.00.

For the year 1939, $43,030.00; for the year 1940, $42,510.00; for the year 1941, $126,734.71; for the year 1942, $340,105.08.

United Artists Theatre:

1937, $231,964.51; 1938, $179,218.36; 1939, $138,118.79; 1940, $156,159.87; 1941, $132,678.22; 1942, 189,150.34.

1066 Mr. Adcock: For the film rental for the Tower Theatre, the same years:

For the year 1937, $66,431.70
For the year 1938, 60,919.43
For the year 1939, 69,580.21
For the year 1940, 76,362.81
For the year 1941, 68,619.38
For the year 1942, 71,378.45.

That represents film rental, total film rental paid to all distributors at those different houses for those years, not only the Tower but the Loop houses.

The Tivoli, that I thought I had the information here on, but I think I must have it in the office. I will locate it.

Mr. McConnell: Have you any objection to my putting it in after the close of my case?

Mr. O'Brien: No.

Mr. McConnell: I will ask Mr. Korfist to read the admissions for RKO Palace Theatre.

Mr. Korfist: (Reading:)

Season 1936-1937	$ 92,949.37
Season 1937-1938	102,986.34
Season 1938-1939	64,547.29
Season 1939-1940	81,561.97
1067 Season 1940-1941	103,119.58
Season 1941-1942	89,537.05.

Mr. Seeley: Will you be good enough to read the caption on the piece of paper also?

Mr. Korfist: "Statement of film licenses credited to RKO Radio Pictures, Inc. on account of exhibition of its film in the Palace Theatre, Chicago, by Chicago Orpheum Company, by motion picture season."

Mr. Seeley: I think Mr. McConnell understands the reason for that,—because the witness, I believe Gorelick, possibly Osserman, testified they don't actually negotiate film deals between RKO and the Palace Theatre; they are

negotiated at the company's Home Office in New York, and they simply notify RKO what amount to take credit for. I wanted that clear to explain the figures.

Mr. McConnell: Could we have a recess to check our exhibits, and then we will be ready to close the plaintiffs' case.

The Court: Yes. How long do you think that will take, to check your exhibits?

Mr. McConnell: About ten minutes.

The Court: All right, take a recess.

Mr. O'Brien: Wait just a minute.

1068 Mr. Adcock: Maybe you forgot to ask for some other material. Do you want it?

Mr. McConnell: Let us see what it is. Well, that is one of the things we can check in the ten minute recess.

Mr. Adcock: All right.

The Court: All right, take a recess for ten minutes.

(The jury here left the court room.)

(The following proceedings were had out of the presence and hearing of the jury:)

Mr. McConnell: Before the Court leaves the bench, this witness, Salkin, was confronted with certain statements which he made in the past. Now it seems to me that, where a witness is confronted with a document, that any explanation that he has to make is competent and proper in fairness to the witness. Now he wanted to make some explanation about that document. I asked him to make it. It was objected to. It seems to me that in fairness to the witness that they are trying to impeach here, if he has some statement that he wants to make, he should be

1069 permitted to make it. I don't know what it is.

Mr. Adcock: I think that is the sound theory, confronting a witness, if he has an explanation, to make it.

The Court: You say he should make it?

Mr. Adcock: I think he has the right.

The Court: Then you and Brother O'Brien don't agree here on that objection. I think you better take counsel with each other.

Mr. Adcock: No, if the witness did not of his own volition—

The Court: Then we will call him back and let him make whatever explanation he wants to.

Mr. McConnell, your associate, during the noon hour, borrowed this little book by a gentleman named Goldstein

and I think in there you found the answer to this question that was troubling us, didn't you?

Mr. Korfist: I found this one case we are relying on.

The Court: They set forth the entire trial technique here, which is just what these gentlemen are relying on.

Mr. Korfist: I found that case, 212, cited in there, 1070 —or 146.

The Court: He cites in here several Illinois cases and questions and answers to get about the contradiction in just the way—we will call them now "these eminent lawyers" did it in this case.

Mr. O'Brien: You are right about my position. That is, I don't agree with Mr. Adcock as to the propriety of any question by way of explanation at this time. There is no point of impeachment pending. If the witness wants to answer either yes or no, then he can answer either yes or no.

The Court: Well, he answered "yes" and I imagine now his position is "yes, but." Now he wants to explain why he did it.

(Recess)

1071 (The following further proceedings were had in the presence of the Court and jury:)

Mr. McConnell: Will you mark this with the next exhibit number?

(Document marked Plaintiffs' Exhibit 155 for identification.)

Mr. McConnell: I offer in evidence Plaintiffs' Exhibit 155, which is the data I requested from Mr. Adcock with reference to the percentage playing of Balaban & Katz theatres with the different distributors.

Mr. Adcock: Well, you mean it is the percentage—shows the percentage, the pictures that were played on percentage in the Loop, that played on film rental, and also the same information, your Honor, as to the outlying theatres, covering Paramount, Metro, Fox, Warner and RKO, for all the years 1936, 1937 to 1941, and 1942, except the year 1940-41, which for some reason the accounting department were not able to get the figures on at the time, —but they can be obtained if counsel desires.

Mr. O'Brien: I would like a chance to verify this as against our own contracts, your Honor. I have no objection to it in substance.

The Court: Well, suppose it may go in subject to
1072 your right to verify it, change the figures that you find they should be changed.

Mr. O'Brien: Yes.

(Said document, so received in evidence, was marked PLAINTIFFS' EXHIBIT 155 and is in words and figures as follows:)

1073 Mr. McConnell: Just to cover anything that we have overlooked here between ourselves and the court reporters, I have offered in evidence all documents which have been identified here as Plaintiffs' Exhibits 1 to 155, except that I did not offer exhibits identified as Plaintiffs' Exhibit 2, Plaintiffs' Exhibit marked for identification 3, Plaintiffs' Exhibit marked for identification 50, Plaintiffs' Exhibit marked for identification 51, and 52. Now, with those exceptions, I re-offer all those documents at this time. I am sure the record shows the ruling of the Court on all of them. So there will be no question about my offer, I renew it now.—

Mr. Adcock: I don't know why it is necessary to re-offer them.

Mr. McConnell: I am offering them for my record, for my own protection.

The Court: All right, that re-offer will be accepted.

Now, did you want to ask this witness some questions?

Mr. McConnell: There was one question that was asked—

Mr. Adcock: How about the map there?

1074 Mr. McConnell: I don't think we need offer that in evidence. We can agree with counsel that either side can use the map in any way they want to use it.

Mr. Adcock: There are certain conditions under which that can be offered or used, if it is used at all. It ought to be by agreement.

The Court: Well, it has been used, and I think it should be marked as an exhibit, so that if anything happens about this case they will know what you are talking about.

Mr. Adcock: There is certain data on that, the playing position and the size of the theatre, the seating capacity.

The Court: That is a very simple proposition. What is the last marked exhibit?

Mr. McConnell: It will be 156.

The Court: Let us mark this 156. If you don't care to offer it I will suggest it,—and put that in the record.

Mr. Adcock: Also, your Honor, in that connection we have furnished counsel, which I understood was to be offered in connection with that map, this data of tabulation. It shows all the theatres on the map, the names of them, the location and the size of the theatre, the seating 1075 capacity, and the playing position.

The Court: I don't know anything about that. All I have seen is this map.

Mr. Adcock: Well, the point of this map is that there is certain material on there. The map was made some time ago, years ago. We don't agree to it as accurate, but with that tabulation we have no objection to its going in. Counsel, I understood the tabulation was to go in with the map.

Mr. McConnell: Well, he is objecting to data on the map and I am offering the map. I don't see that we have anything between us.

The Court: I don't know what this matter is that Mr. Adcock has been talking about. He said it was some matter you and he discussed. The map has been here in court and both of you have referred to it in your statements to the jury when you opened this case and I think it is only fair that it go in the record. So it will go in with the last number you gave.

Mr. Adcock: And I referred to the tabulation.

Mr. McConnell: Well, I will offer the map as Plaintiffs' Exhibit 156.

Mr. Adcock: Well, I object to it being received unless the other data to which I have referred is offered 1076 with it.

The Court: I don't know anything about the other data. The map has been here and exhibited to the jury.

Mr. Adcock: But, if your Honor please, when we came in here it was understood between Mr. McConnell and myself that we would have no objection to the map provided there was a tabulation showing the names of the theatres on that map, the size of the theatre, taken from their license records in Chicago—I went to a lot of trouble to get that up—and also showing the playing position of the different theatres, and they are all shown on the tabulation in alphabetical order.

The Court: I say I don't know anything about that. This

is the first I have heard about that. If you say you have had that agreement with Mr. McConnell, that is one thing. If he disagrees with you, that is something else.

Mr. McConnell: Well, I have no agreement with Mr. Adcock that we were going to introduce in evidence data. I said the data should be put on the map and we both refer to it. Now, if he wants to offer it, all right, but I don't want to offer his data. I have not had a chance
1077 to check it. I have not had a chance to even look at it in the course of this trial. I don't know what it is, even.

Mr. Adcock: Then I object to the map being offered, because it has data there—

Mr. McConnell: He might have a statement in there that I have no lawsuit,—I don't know. I am not going to offer it.

Mr. Adcock: Well, I spoke about it to you,—

The Court: Well, to bring this to a close we will just take the map out of the record. We have used it all during the trial. Now we will take it out. What else?

Mr. McConnell: Now, Mr. Salkin had some statement to make.

The Court: Yes, and we sustained an objection to your question and then came to the conclusion that we were wrong, so now we are going to let Mr. Salkin answer your question. Step up here, Mr. Salkin.

1078 RICHARD SALKIN, a witness called on behalf of the plaintiffs, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. McConnell.

Q. The question was asked, Mr. Salkin, what was the occasion for signing this document which has been marked for identification as B. & K. Exhibit 2.

Mr. Adcock: I think Mr. Salkin has indicated, through counsel, that he has an explanation to make. It seems to me he should make the explanation, that is all.

The Court: That is the reason you are put back on the stand, Mr. Salkin, to explain—what explanation did you have to make or do you want to make as to the reason you signed that document.

The Witness: At that time Mr. Aaron Saperstein, who was president of Allied Theatres, came to me as an exhibitor and asked me to go along with the distributors and the chain organizations in setting up a price of admission, and I thought it would be O.K., and I signed it. After signing it a period of time I found out I was in trouble again as far as my playing position and admission
1079 price, and I felt the same as I had originally felt that that admission price would not mean anything as far as I was concerned.

Mr. McConnell: That is all.

Cross-Examination by Mr. Adcock.

Q. Mr. Aaron Saperstein was the president of Allied?
A. Yes, sir.
Q. And you were an officer of Allied?
A. No, sir.
Q. You were a director of Allied, weren't you?
A. No, sir a member of Allied.
Q. A member of Allied at the time?
A. Yes, sir.
Q. Weren't you a director of Allied during Mr. Saperstein's lifetime?
A. No, sir.
Q. What?
A. No, sir.
Q. Weren't you secretary or something of Allied at the time?
A. At the present time, sir.

1080 *Cross-Examination by Mr. Seeley.*

Q. Mr. Saperstein was not a representative of any distributor so far as you know, was he?
A. No, sir.

Mr. Seeley: Thank you.

Cross-Examination by Mr. O'Brien.

Q. And you signed the document for the Jackson Park?

Mr. McConnell: I object to that, who he signed it for. It appears in the document, I suppose.

Mr. O'Brien: I am asking him. He is telling the circumstances.

Q. You did not sign it individually, did you?

A. I signed it as a representative of the Jackson Park Theatre.

Q. And when you say that admission prices or minimum admission price did not mean anything to you, you don't mean to say by that that minimum admission prices were not observed by the members of your association, do you?

A. The admission prices were changed according to that schedule by all exhibitors, including B. & K., and everyone else. We found that the admission prices
1081 were not working out they were not working out with the business that we were doing.

Q. Do you mean any exhibitor reduced his admission prices below the minimum?

A. According to that schedule the minimum was changed. I think in first week it was 30 cents at the time that thing was changed and later it was changed to a quarter.

Q. And when that was done all exhibitors went along, didn't they?

A. Changed their admission.

Mr. McConnell: I object to what all they did.

Cross-Examination by Mr. Adcock.

Q. Do you know how many signed this document?

A. No, sir.

Q. Do you know how many theatres they represented?

A. No, sir.

Q. Was it about 138 theatres?

A. I cannot answer you, sir.

Q. Have no idea at all?

A. No, sir.

Mr. McConnell: That is all.

1082 *Cross-Examination by Mr. O'Brien.*

Q. They were all independent exhibitors, though weren't they?

A. When I talked to Mr. Saperstein.

Mr. O'Brien: I did not ask you when you talked to him, but those who joined in this document.

A. I don't know, sir. I could not swear they were all independents. You can look at them—the record, I imagine it showed. I haven't the records here, sir.

(Mr. O'Brien here handed the witness a document, which the witness looked at.)

The Witness: You mean distributor exhibitors or independent exhibitors? Now I notice S. & S. is here.

Q. Well, S. & S. is not affiliated with any producer, is he?

A. That is what I asked you, sir. I asked you affiliated or not affiliated.

Mr. O'Brien: Yes.

The Witness: I don't see any affiliated so far. No, sir, I don't see any affiliated, sir.

Mr. O'Brien: That is all.

(Witness excused).

1083 Mr. McConnell: Mr. Adcock and I finally have agreed to this on the map, that the map will be offered in evidence with Mr. Adcock's data, subject to my right to check the data.

The Court: I congratulate both you and Mr. Adcock.

Mr. Adcock: We had no trouble about agreeing.

You have the original and the carbon of the tabulation.

Mr. O'Connell: I suppose I have, but I have not had a chance to check it.

The Court: Now that you and Mr. Adcock have renewed your friendly relation, you rest your case?

Mr. McConnell: Yes, your Honor.

Mr. Adcock: I have never been ruffled at all.

The Court: Then that goes in as Exhibit what?

Mr. McConnell: The map will go in as Plaintiffs' Exhibit 156.

(The map referred to, so received in evidence, was marked PLAINTIFFS' EXHIBIT 156, and is as follows:)

1084 Mr. Adcock: And the tabulation as Exhibit 156-A.

Mr. McConnell: Correct.

Mr. McConnell: The plaintiffs rest.

And thereupon the plaintiffs rested their case in chief.

1085 The Court: I take it you gentlemen have some motions that you want to make?

Mr. O'Brien: Yes.

Mr. Seeley: I have.

The Court: Well, then, we won't finish those for a few minutes anyhow, and the jury might as well be excused until 10:30 tomorrow morning.

(The jury here left the court room.)

1086 (The following proceedings were had out of the presence and hearing of the jury:)

Mr. Seeley: At the conclusion of the plaintiffs' case I hand to the Court a written motion for a directed verdict, on behalf of RKO Radio Pictures, Inc., Loew's Incorporated, and Twentieth Century-Fox Film Corporation, and an attached requested instruction.

1087 Mr. O'Brien: We have a similar motion on behalf of our defendants, your Honor. (Handing document to the Court).

1088 The Court: I suppose each one has a similar motion.

Mr. Adcock: I don't know.

Mr. O'Brien: I don't know about the body of the motion.

Mr. Adcock: I think probably the object is the same.

I have a motion on behalf of Paramount and Balaban & Katz that the Court direct a verdict in favor of the defendants.

I wonder if I have to sign this. I guess I do.

The Court: Somebody ought to sign it.

Mr. Adcock: Yes.

(The motion was signed and presented to the Court.)

1219 Two opposing philosophies are presented in this case. As I have sat here and listened to the arguments of counsel, I have listened to a static system 1220 imposed from above, under which those who live under it are deterged and ordered and given certain positions, and I can't help but opposing that, in my mind, with what I conceive to be the order under which the laws of this country grant to a man conducting any business.

I have a lawsuit here which involves the right of these plaintiffs, or any people, to try and improve their business position, to try and better their condition. I am trying to assert their right to bid their money against anybody, against any combination of persons,—the right to bid for the product upon which their business depends; and, as I have listened to these arguments, I felt that there was something inherently wrong, something basically wrong

with any system, with any philosophy which can assert, here before your Honor, that a citizen of this country of ours doesn't have that right.

1221 So, I say, over and above the disposition of the issues here inherent in the situation are matters of public policy of which this Court should take cognizance. And that is not matter extraneous to the issue in the case either, because, under all the cases that counsel have cited, under all law that is set forth here, there is a final and ultimate question: Is this a reasonable system under which to do business. And there is no case anywhere which has denied to a litigant the right to have that issue of fact determined. Why can't a jury determine that question of fact, drawn from all the facts and issues in this case? That is the thing that is before your Honor.

1223 As I will show your Honor, there is no case that I have been able to find—there has been none cited here—which holds that a system which is designed to fix prices, which is designed to fix what is taken from the public in admission prices, can be reasonable or can be valid.

Reasonableness without price fixing is a question for the jury, but on beyond and over and above that, where you have got what you have in this case, price fixing, you have a scheme with a motive into which the facts focus, and which show what the plaintiffs attempt to show in this case.

I want to call your Honor's attention to *United States* v. *Masonite Corporation*, 316 U. S. 266.

1224 Now I am not only citing this on the proposition that price fixing is illegal per se, but on the proposition which Mr. Seeley stated, that I must show that these parties came together and met and agreed; that where there is an influence they might have acted independently. I cannot show that from the facts and the similarity and the joint action and all of that.

Here they found there was a combination, and in the trial court, the District Court found, made an express finding that in negotiating and entering into the first agreements each appellee, other than Masonite, acted independently of the others, negotiated only with Masonite, desired the agreement regardless of the action that may be taken by any of the others but did not require, as a condition of its acceptance, that someone make such an

agreement with any of the others and had no discussions with any of the others. The court said:

"There can be no doubt that this is a price-fixing combination which is illegal per se under the Sherman Act, and that that is true, even though the District Court made those express findings."

1228 Now, what do we have in this case? The testimony here of Mr. Shumow was that the whole purpose of these runs and the whole purpose of these admission prices was to maintain the price structure in the Loop. To save the Loop theatre from the competition of the subsequent-run theatre, minimum admission prices were imposed.

1230 Now, what is there further? We find that the
1231 distributors have the same provision in their contracts, that all exhibitors provide, that if the minimum prices in a run are not maintained, the run is lost, the license is lost and the penalty is applied. So we have a lot more than naming the admission price. We find all the distributors enforcing it, and we find all the distributors interested in the admissions in the Loop.

Now, all of that may be just a matter of coincidence, but when we find that counsel says that they know the setup, know it and join in it, then under the Masonite case, they are in it. What is our question here on that point? Is there any evidence to go to the jury, giving us the inference which should be given to the plaintiffs' evidence? There is no question about that rule of law. We are entitled to the inference on that proof. And when one is entitled to a decision, whether or not we have proof of that situation under your own knowledge and experience and background, proof of conspiracy cases is difficult, of course; but when you find the thing you find here, to say that each man here is acting independently and
1232 having no interest in the other, when we find them all interested in the Loop theatre prices, which in turn are fixed all the way through, up and down the line, then we find what we have in the Masonite case.

Let us go a step further. Mr. Seeley said that any distributor of film that is copyright could do what he wanted to in the way of prices. If he is talking about film and the price of film, and is dealing with one dealer and is not dealing with what the person shall do with the film, I will agree with him.

But what the situation here? We have one distributor telling a theatre which is exhibiting not only its copyright film, but everybody else's copyright film, and maybe entertainment besides; telling him what he shall exhibit,—everything he shows in his theatre there. There we have a situation which is not protected by the copyright, and we have a situation which is completely analagous to the situation presented in the Ethyl-Gasoline case, where the owner of the patent on the Ethyl material provided that when it was added to the gasoline, the gasoline had
1233 to be sold at a fixed price, not only a price that includes him as owner, but others as well. Under the Ethyl case, that is illegal.

Now, in the Interstate Circuit case, U. S. Supreme Court had before it a case involving an Interstate Circuit down in Texas. That case is 306 U. S. 208, 83 Law Edition, 610. In referring there in that case to this question of admission prices, he said:

"The consequence of the price restriction, though"—

Here they had stipulated that the price should be a certain amount of subsequent run of the theatres. The Interstate Circuit had Class A houses. The Interstate Circuit stipulated with the distributors through a clearance agreement similar to what we have here, that subsequent run houses were to play at the minimum prices, and it appears that some of them had to increase the admission price to meet the terms. The Court said:

"The consequence of the price restriction, though more oppressive, is comparable with the effect and result of price maintenance agreements which have been held to be unreasonably restrained in violation of the Sherman Act.
Citing Dr. Miles Medical Company and John D. Park
1234 & Son, etc." So that does apply in this kind of case.

Now, in the Gary Theatre case referred to here by Mr. Seeley,—I think all counsel have referred to it. The Court distinguished the case upon no price being fixed. No question was raised as to the admission price or anything of that kind. So to sum up that part of the case, I say we are way past the question of conspiracy in this case. The evidence here is such that an intelligent person would revolt against these men not knowing what they were doing, and did not realize the consequence of that act. They have admitted that fact in their depositions. Certainly we have shown to the jury the question of whether or not, in the

whole case, what they have said is reasonable. Under this decision I don't see how the jury can find it, but anyway, there is certainly enough to go to the jury on.

1237 Now, where do we go from there? There has been a lot of discussion here about theatres, about the relative merits of theatres, but there is no issue on the fundamental facts in the case. These counsel stand here and concede that they sell their pictures to chains ahead of us, and when we come to buy, we cannot buy because they are already sold. We never have a right to bid our dollar against their dollar. They say that is justified, but there is no case to justify that. To show that their system is reasonable, they must show that there is a chance for the man, that he is not in a static system, that he is not tied to a particular place, but always has a chance some-

1238 where along the line, at the conclusion of some clearance agreement, to come in and say: "Here, I have a right to bid my dollar against your dollars." They have not made that issue in this case at all. They say: "Why, there is nothing to it. We can do it." But they cannot. They say we have not come in and tendered a certain amount of money. How could we? The law is perfectly clear. It is Hornbook law, that where they indicate that your tender is useless, that your money buys nothing, is useless, you don't have to do that which is legally impossible to do. There is no question about the law on that.

1239 Now, Mr. Adcock says that somebody has to determine this, who the theatres are, but he will not let the jury determine that. He is going to determine it. He is representing his clients, Paramount and Balaban & Katz that have control over all this distribution, reaching out through the whole industry. They are going to determine that.

I don't need to elaborate on what kind of a fair

1240 system that is, where the man who is going to determine your playing position, is your competitor, your own competitor. Your own competitor is going to determine that. How are we ever going to better our playing position except by the Court's willingness to take these facts and find out.

Now, they say there is no proof here as to the relative merits of these theatres. The jury has been out and seen the thing. There is a whole lot of proof already before the

jury. They have seen the locations of the theatres, they have seen what this man has got and they have seen what the other man has got. They have seen the locations. That is a jury question. Your Honor must see that that is a jury question, as to the relative merits of these theatres, a question which we can argue to the jury on the whole record. It seems to me, from the argument of credibility of the testimony and all that, we have conceded that that was a factual situation. This whole thing is a factual situation. There is no question of law which is determinative of this case, definitely determinative of it one way or an-
1241 other.

1250 And I submit that the plaintiffs in this case are entitled to go to a jury.

The Court: Let me ask you a couple of questions, Mr. McConnell.

As I understand it, you claim that these defendants, by their concerted actions, have violated these federal laws, as set forth in your declaration, namely, in two respects, as a result of both of which your client has suffered damage.

One is, you claim that they have conspired to fix the prices charged for a product that is moved in interstate commerce.

Mr. McConnell: That is right.

The Court: That is one charge. And then the other charge which goes along with that is that as a result of their alleged conspiracy, they have set up a monopoly, the result of which has not permitted your client to engage freely in the business in which he is engaged.

Mr. McConnell: Exactly.

The Court: From a competitive standpoint.

1251 Mr. McConnell: Exactly.

The Court: Those are the two main charges.

Mr. McConnell: That is right.

The Court: And as the result of either one of them, or both of them, you claim you have suffered damage that is the reason for your lawsuit.

Mr. McConnell: That is right.

The Court: All right.

1265 Now, as to the so-called price fixing aspect of this case, Mr. McConnell has not seen fit to answer the proposition of law which I asserted, and which I believe
1266 is incontroversible, and that is that private citizens, under the Sherman and Clayton Acts, are confined in

their remedies to those things which are both a violation of the Sherman Act, and which directly and proximately damage their own businesses.

The Government, and the Government alone, under those laws, has the right to call into question the validity of a business practice, without regard to its effect. They can question the validity of certain business practices without being under any obligation to show that it damaged anyone. But a private party, and this I have shown by the authorities, must show that he is directly and proximately damaged by the acts pursuant to the conspiracy of which he complains. And I pointed out, and Mr. McConnell has not asked me, that during the entire period during which the statute of limitations permits the plaintiffs to sue for damages in this case, they voluntarily charged more than the minimum admission price clause in their contracts.

They can not possibly claim any damage by reason of that, and since they are not the Government, have not the Government rights of inquisition, they cannot pos-
1267 sibly call into question in this court the effect, whatever it may be, of the minimum admission prices clauses in anybody else's contracts; and because that is so, I am not going to argue, although I could with both force and effect, I believe, the fact that as a matter of fact there is not any unlawful price fixing involved here.

In the absence of conspiracy, no court has ever denied the fact that a copyright owner, retaining in himself the ownership of his copyrighted product, has a right, acting separately, to determine the prices for which his licensees can use that product. It has never been denied in any case; but as I say, the question can not come up here because it is not even remotely connected with any possibility of damage.

And on the conspiracy issue, if the Court please, Mr. McConnell has cited what, the Masonite case, and he called your Honor's attention to the fact that a conspiracy was found there from simultaneous action, even though the parties did not communicate directly with each other.

Now, your Honor, yesterday I did not represent to you that one could not have a conspiracy by tacit agree-
1268 ment as well as by express agreement. Of course, one can. All that I said was that in attempting to infer the existence of a conspiracy, if simultaneous conduct is one of the circumstances relied upon, then you must go

further and consider all of the other circumstances, to determine whether, under those particular facts, similar conduct does or does not indicate a conspiracy. And then I went on and I cited these motion picture cases, where the facts were closely parallel to the facts which we have here, and I showed where the courts, considering those facts, had found that similarity of conduct did not indicate a conspiracy, tacit or express.

Now, Mr. McConnell has simply gone to a case which deals with an entirely different set of facts.

In that Masonite case there was a fake del credere agency set up whereby all the wall board manufacturers in the country pretended to be the agents of the Masonite Company, and voluntarily admitted the supremacy of the Masonite patents, although that was very doubtful, and they gave the Masonite Company the full right and
1269 scope to fix prices all over the country, and a lot of things like that which are in no way similar to the circumstances with which we are dealing here.

I have no doubt Mr. McConnell could dig up any number of cases dealing with different circumstances where similarity of conduct had some aspects of unlawfulness, but that does not answer the question that the courts have held, that under such circumstances as we have here, the contrary is true.

1276 Now, the reason Mr. McConnell does not speak of the facts is because the facts do not sustain him. He therefore does speak of matters of law. Your Honor correctly understood him and announced it as the first proposition which you understood, that his complaint was that, as a matter of law, this arrangement, regardless of what the particular facts might be in the case, as a matter of law the arrangement was a price-fixing arrangement and therefore conclusively involved an illegal thing under the Sherman Act.

1278 Now, since Mr. McConnell does not look to the facts to justify his right to go to the jury, but rests solely upon a legal proposition, and in respect to that, on the Masonite case, that this is a price-fixing agrangement, I think it is quite in order that we take a little time—not too much, but enough—to find out what this Masonite case is.

Before I do that, though, I don't want to rest on any mere assertion to the part that there is a vast difference

between the situation we have here, in respect to motion picture films, and what was involved in the Masonite case.

We do not have involved here a sale of a commodity. There is no use taking time to argue that the attempt to regulate the resale price of a commodity is conclusively in violation of the Sherman Act. There is no doubt that a combination to fix the price at which a commodity may be sold, at which the property or the goods may be transferred to someone else, is a violation of the Act.

But we do not sell. The term is loosely used by the witnesses as "selling film," but on a couple of occasions in the record, one or the other of us has taken the
1279 trouble to inquire if they don't mean, when they use that term, licensing film. And the contracts which are in evidence show beyond any doubt that it is a license, a right to a limited use of the picture for exhibition purposes, for a time, at a place, and at a minimum price prescribed by the distributor.

Yesterday I cited you the case of Federal Trade Commission *vs.* Paramount-Famous-Lasky, 51 Federal (2d) 152, and at page 156 of the opinion of the Second Circuit it is said:

"A distributor of films by lease has the right to select his own customers and to sell such quantities at given prices, or refuse to sell at all, to any particular person, for reasons of his own."

Citing Federal Trade Commission *vs.* Raymond, 263 U. S. and citing U. S. *vs.* Colgate & Company, and citing National Biscuit Company *vs.* Federal Trade Commission, and Great Atlantic & Pacific Tea Company *vs.* Cream of Wheat Company.

Now we need not rest on that with the Circuit Court of Appeals for the Second Circuit. I go to the case of
1280 United States *vs.* General Electric Company, which is still the law and is in no way changed by the Masonite case. But, as your Honor will very quickly see, the facts were vastly different.

In the General Electric Company case, which, as I have it here, is reported in 71 Law Edition, 362, the bill made two charges, one, that General Electric Company, in its business of making and selling electric lights, had devised and was carrying out a plan for their distribution through a number of so-called agents, in restraint of interstate trade in the lamps and to exercise a monopoly in the sale

of them; second, that that company was achieving the same illegal purpose through a contract of license, of license with the defendants, Westinghouse Electric, and one of its connected companies. For the purpose of the case they were both considered one.

Now, there had been prior litigation between the United States and the various defendants and other corporations, in which the Government sued to dissolve an illegal combination in restraint fo interstate commerce in electric lamps, in violation of the anti-trust laws. And there
1281 was a consent decree.

The defendants, under that decree, were all enjoined from fixing retail prices for purchases, except—except that the owner of the patents were permitted to fix the prices at which a licensee should sell lamps manufactured by it under the patent. And it was following that consent decree that a new plan was made, submitted to the Attorney General, not ruled on by him to be acceptable, and when that plan was put into effect, this suit was started, the same, substantially the same charges being made.

The Court stated, at page 368:

"The question is whether, in view of the arrangements made by the company with those who ordinarily and usually would be merchants buying from the manufacturer and selling to the public, such persons are to be treated as agents or as owners of the lamps, consigned to them under such contracts."

And, on the same page:

"It is only when he adopts a combination with others, by which he steps out of the scope of his patent—"
1282 in our case it is copyright rights.

"—rights and seeks to control and restrain those to whom he has sold his patented articles in their subsequent disposition—" that it is illegal.

Now, applying that to the case, says the court, at page 370:

"The patentee may make and grant a license to another to make and use the patented articles but withhold his right to sell them. The license in such a case acquires an interest in the articles made. He owns the material of them and may use them. But if he sells them he infringes the right of the patentee, and may be held for damages and enjoined. If the patentee goes further and licenses the selling of the articles, may he limit the selling by limiting

the method of sale and the price? We think he may do so provided the conditions of sale are normally and reasonably adapted to secure pecuniary reward for the patentee's monopoly."

And the court so held.

1283 And Mr. McConnell says that the purpose of this scheme of distribution, the purpose of the staggered runs is to get the greatest revenue to the distributor for the licensing of his picture, the title to which remains in him and which he ultimately gets back after the finish of the run. He says that is wrong. That is not wrong in respect to patented and copyrighted articles. In the case of a licensing he is entitled to recover it to get his reward.

Now there is nothing contrary in that. The Supreme Court, in the Masonite case, does not overrule and does not purpose to overrule the General Electric case. The Masonite case, to which counsel gave you the citation yesterday, indicates this. Now I have 62 Supreme Court Reporter, page 1077. I won't read too much of this, your Honor, but I want you to see the gist of the case here.

After Mr. Justice Douglas sets up the facts—here Masonite had this hardwood; there were various competitors, Celotex and Certain-Teed Products, a great list of others, and they all made like articles under different patents, and they had various litigations, one at a time, with

1284 Masonite,—and I think Masonite never established that there was any violation of its patents or any infringement of its patents; one after the other those cases were settled, and each time they were settled Masonite made an agreement, a so-called agency or del credere agreement with each one of these folks, not agents out in the field and not normally set up for that purpose, but competitive manufacturers making the same type of product, whereby each of those companies which had been in litigation was to act as a del credere agent and market those goods, always at a price fixed and maintained and subject to change by Masonite. In other words, they had to keep up the price of the Masonite products and could not cut it down to favor their own products. But it was purely fictitious, as it did not take Mr. Justice Douglas very long to see. What did he do with the General Electric case? At page 1077:

"But it is urged that the arrangement is saved from the Sherman Act by the General Electric case. The District

Court so held, as we have noted. In that connection
1285 the District Court found that Masonite's patents on
hardboard were 'fundamental and basic,' that there
was no monopoly or restraint other than the monopoly or
restraint granted by the patents, that the parties had an
honest and sincere intent to recognize and exercise the
rights belonging to Masonite under its patents, and that
the agreements constituted a 'true agency' to carry out
that purpose."

So Justice Douglas goes into a discussion of those del credere agent agreements historically, and then he gets down to the real basis of this decision,—something which must already be apparent to the Court. He says:

"Doubtless there is a proper area for utilization by a patentee of a del credere agent in the sale or disposition of the patented article. A patentee who employs such an agent to distribute his product certainly is not enlarg-
ing the scope of his patent privilege if it may fairly
1286 be said that that distribution is part of the patentee's
own business and operates only to secure to him the
reward for his invention which Congress has provided.
But where he utilizes the sales organization of another business—a business with which he has no intimate relationship—quite different problems are posed since such a regimentation of a marketing system is peculiarly susceptible to the restraints of trade which the Sherman Act condemns. And when it is clear, as it is in this case, that the marketing systems utilized by means of the del credere agency agreements are those of competitors of the patentee and that the purpose is to fix prices at which the competitors may market the product, the device is without more an enlargement of the limited patent privilege and a violation of the Sherman Act."

Now, I get back, your Honor, to the "system". I wish to call attention briefly to a short paragraph at the end
of the Gary case, where there, as here, they sought to
1287 tell the Court that the staggered run, the classifica-
tion, reasonable classification of theatres according
to their merits was illegal, as a matter of law, that is Mr. McConnell's argument, illegal,—although he did not go into any facts.

Judge Lindley, following the opinion,—it was just about three or four years ago, says at the end:

"To determine the question in favor of the plaintiff

would necessitate the substitution of our judgment and it would require us to hold, either as a matter of law, that a conspiracy has been established or that the priority of runs and clearance practice whereby plaintiff was placed in the same category as the B theatres in Chicago and South Chicago, created, as a matter of law, an unreasonable restriction in interstate commerce. This we do not believe that we are justified in doing."

And they did not.

1314 The Court: Well, I want to say that I appreciate this argument. You folks might have thought it was tiresome, but I did not consider it so at all. I have thoroughly enjoyed it, and I think I have learned a whole lot from it.

But after having heard all of the argument, even though I respect all of you gentlemen who have participated in it, and particularly, do I recognize the great effort you have put forth in bringing these matters to my attention, from the evidence I have heard in this case so far, I am forced to the conclusion that all of these motions must be overruled; and the defense will proceed.

Bring in the Jury.

Mr. Adcock: I wonder, before we bring in the Jury—we had a few things to straighten out.

The Court: Wait a minute. Now they have something else they want to straighten out.

Mr. Adcock: Just to straighten out some of the exhibits.

The Court: Let us bring in the Jury. We have had them in limbo now for two days. Let him have a little light of day. They perhaps won't even recognize
1315 you when they come in.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: Did you have something you wanted to suggest, Mr. Adcock?

Mr. Adcock: Well, I think we had some Exhibits that we were trying to get straightened out, but maybe that can wait.

The Court: Why can't you do that afterwards?

Mr. Adcock: I think that probably will be all right, it can be done.

The Court: After we finish our session here.

Mr. Adcock: We want to offer the deposition of Mr. W. C. Bloom, and I wonder if I could sit there, Mr. O'Brien.

Mr. McConnell: We haven't our depositions here. Could we—

Mr. Adcock: I haven't anyone I want to put on. I want to put this on first. Have you got a copy?

Mr. Goldberg: Yes.

1316 (And thereupon the deposition of William C. Bloom, was read to the jury, as follows:)

"WILLIAM C. BLOOM, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and deposed as follows:"

Mr. Adcock: This examination took place, according to the deposition, on January 24th, 1944, at the hour of 10:30 o'clock A. M., at the office of Edmund D. Adcock, Suite 1225—134 South LaSalle Street, Chicago, Illinois.

"Direct Examination by Mr. Adcock.

"Q. What is your name, residence and business?

"A. My name is William C. Bloom. I live at 8209 Drexel Avenue.

"Q. And what is your business?

"A. Well, I am a partner in the Jackson Park Building Company.

"I might say that that Jackson Park Building Company, that includes the Jackson Park Theatre and the real estate connected with it, stores and some offices and some apartments.

1317 "Q. And when were you born?

"A. June 11th, 1915.

"Q. Your partners are whom?

"A. My brother, John E. Bloom, and my two sisters, Florence Bigelow and Marion Koerber.

"Q. What is the relation of ages of your different partners?

"A. Well, they are all older than I am.

"Q. They are all older; you are the youngest?

"A. Yes.

"Q. John E., what is his age with respect to yours?

"A. He is nearly five years older than I am.

"Q. And your sisters, they are older than either of you?

"A. Yes, they are.

"Q. When was this partnership formed?

"A. Approximately November 1st, 1936.

"Q. That was the time that you acquired, that is, the four that you have mentioned, acquired the interest in certain real estate of which the Jackson Park Theatre is a part?

"A. Yes, sir.

"Q. Was there a contract of partnership entered into?

"A. Yes.

1318 "Q. A written contract?

"A. Yes.

"Q. Have you a copy of it?

"A. I might have. I don't know for sure."

Mr. Adcock: Then there is a colloquy between the witness and counsel.

Then the witness states:

"Maybe I made a mistake. I don't know if we had a contract saying that there was a partnership, but we bought it as a partnership.

"Mr. McConnell: What are you referring to, the contract of purchase?

"Mr. Adcock: Well, I am referring to the contract of partnership. That is what you are referring to (addressing the witness)?

"A. I could not say if there was one of those or not.

"Mr. Adcock: Q. Well, did you have any oral agreement of any kind?

"A. Yes.

"Q. Just, in a general way, what was the nature of that?

"A. Well, that we were partners, the four of us, each of us were partners, to own one-fourth of the property.

"Q. And what was the business of the partner-

1319 ship to be?

"A. Well, the business was to be owning and operating the Jackson Park Theatre, and the building which is known as the Jackson Park Building.

"Q. And since November 1st, 1936, or about that time, the partnership carried on that business that you have described, is that correct?

"A. Yes.

"Q. And is carrying it on now?

"A. Yes.

"Q. What are the assets of the partnership?

"A. What are the assets?

"Q. Yes.

"A. Well, they are the cash in banks, I presume, and the building, the land, and the fixtures that are in the building, in the theatre.

"Q. And the equipment of the buildings, and the equipment of the theatre, and the real estate, including the buildings—

"A. I imagine,—

"Q. (Continuing:)—on this property?

"A. (Continuing:)—and you can say good will, too, probably.

"Q. Have you a plat or survey of the property that was purchased? Do you know whether you have 1320 that?

"A. Do you mean a blue print?

"Q. Well, yes; that will give the—I am sorry.

(A short delay.)

"Q. You think you have?

"A. I know when we bought the building we had one. We might have one now, but I am not certain just where it is, the same one.

"Q. Did you have a contract with respect to the purchase of the property that you have spoken of?

"A. I believe you would say yes. I would say yes.

"Q. What was the street and number, street number or numbers of the property that you purchased?

"A. Do you want the building and the Theatre?

"Q. Yes, both.

"A. Well, it is from 6701 Stony Island Avenue to 6711½ Stony Island Avenue; and it is 1601 East 67th Street to 1625 East 67th Street; and 6704 Cornell Avenue to 6712 Cornell Avenue.

"Q. Do you know about what the frontage is on Stony Island Avenue, that is, the distance from the corner?

"A. No, I don't know exactly.

"Q. Of Stony Island and 67th Street to the southern boundary of the property?

1321 "A. I don't know exactly.

"Q. Can you describe the buildings on the property that you purchased?

"A. Well, from 6701 to about 6709 Stony Island Avenue, that is, I will say exactly from 6701 to 6709 Stony

Island Avenue, there is, on the main floor there is five stories. Then above that there is two stories which contain loft space, which are empty at the present time. From 6709 to 6711½ contains the Jackson Park Theatre; above that is the same, two stories, which contain loft space. Above 6701 to 6705 there is about three offices on the second floor, Doctors' offices, and then above—

"Q. Is that in the Theatre building, the offices?

"A. It is—The entrances to those offices are from 1605 East 67th Street.

"Q. Oh, yes.

"A. There is about eight offices up there, and I think about seven of them are occupied. Then from 1601 to 1625 there is some stores. I will count them exactly, about eight stores. Above that there are two stories which contain a hotel.

"Q. You are talking about 67th Street now?

"A. Yes, sir.

"Q. How many stores did you say?

1322 "Well, I will count them exactly. Let's see. There is one—I would say there is eight; might be seven stores. Two of them are double stores.

"Q. I see. And offices above, did you say?

"A. No. I said above that, I said there is a hotel in the two stories.

"Q. Oh, yes, I see.

"A. Then from 6704 to 6712 Cornell Avenue there is twelve three and one-half room apartments; there is thirteen, I should judge.

"Q. Now, take the offices that you have mentioned. How many of those are occupied? First, take how many are vacant?

"A. I believe one is vacant.

"Q. Of all the offices which you have mentioned?

"A. I mentioned eight offices, I think, and I think I said before that one of them was vacant.

"Q. One of them is vacant. How long has that been vacant?

"A. About three years.

"Q. In the past three years were there any other vacancies in addition to the one that you have mentioned, that is vacant now?

"A. Offices?

"Q. Yes.

A. Yes, sir. There was three offices vacant;
1323 when the Doctor went in the Army, and I guess it was vacant for a year or a year and a half, and now there is another Doctor in that office.

"Q. He rented it; he had taken his place?

"A. He rented the office.

"Q. Yes. And how about the store space; are there any vacancies there?

"A. Yes, sir.

"Q. How many stores are vacant of those that you have mentioned?

"A. There is two.

"Q. And where are they located?

"A. One was the laundry, one was the grocery store, about 1621 East 67th Street. I don't know the laundry's number, exactly.

"Q. Then there is a grocery store?

"A. It was a grocery store. It is vacant now.

"Q. Yes. So there are two vacant on 67th street, is that correct?

"A. Yes, sir.

"Q. How about the stores on Stony Island avenue?

"A. The drug store is vacant.

"Q. How long has that been vacant?

"A. About a year and a half.

"Q. That was formerly occupied by Walgreen's, 1324 was it?

"A. Walgreen's was in there at one time.

"Q. How long?

"A. I don't know how long.

"Q. For a number of years?

"A. Yes. After Walgreen there was another tenant in there.

"Q. What did that tenant do, what was his business?

"A. Drug store.

"Q. Then how long did that tenant occupy the property?

"A. About four or five years.

"Q. And he moved out about a year and a half ago, is that correct?

"A. Well, after he was there, there was another tenant there. The last tenant that was there was the one that moved out.

"Q. I see.

"A. That wasn't the one that preceded Walgreen's.

"Q. Well, then, see if we can get this. When did Walgreen move out?

"A. I can not say for sure.

"Q. What tenant succeeded Walgreen; was it a drug store?

"A. There were two drug stores after, after Walgreen's.

1325 "Q. One was there about four or five years?

"A. Yes.

"Q. And then another one succeeded?

"A. That is right.

"Q. How long was that tenant there?

"A. Well, the one that was there right after Walgreen, went bankrupt. He had a whole bunch of stores, and then the other—

"Q. Who was that?

"A. Hartman Drug Company. Then there was this other fellow. I don't know if he was there, I could not say exactly how long he was there; maybe it was six months, maybe it was a year and a half.

"Q. Was he a druggist, too?

"A. Yes, sir.

"Q. And it was about a year and a half ago that that one vacated, and it has not been rented since?

"A. Approximately.

"Q. Any other stores on Stony Island avenue vacant, outside of the ones that you have mentioned, now or vacant during the last four or five years?

"A. No, I don't believe so."

Mr. Adcock: Have you got the documents that were marked?

1326 Mr. McConnell: No, but we offered them, and stipulated that the property was purchased at a certain sales price.

Mr. Adcock: That is true. I had forgotten about that.

Mr. McConnell: I offered them, and you objected to them.

Mr. Adcock: Is there a stipulation as to what the property was purchased at?

Mr. Seeley: Yes, that is right.

Mr. Adcock: All right.

And we will omit certain things that were covered by the stipulation.

Was the amount of the purchase price stipulated?

Mr. McConnell: It was stipulated that we bought it and paid the full purchase price.

Mr. Adcock: I think I will go on from here, then, this page, right from here, 615.

Mr. McConnell: Yes.

Mr. Adcock: (Reading.) "Q. Was there a note given by the purchasers at that time, as part of the purchase price, to the sellers?"

Mr. McConnell: If the Court please, I object.

The Court: What page? Wait until he gets the page. What page?

Mr. Adcock: Page 615.

1327 The Court: What is the question?

Mr. Adcock: "Was there a note given by the purchasers at that time as part of the purchase price, to the sellers?"

Mr. McConnell: I object to the question for the reason that it goes into the purchase price, and we stipulated here on the plaintiffs' case that the purchase price was paid, and the deed was given. I attempted to go into it, if your Honor recalls, and counsel objected, and we stipulated between ourselves. It is just immaterial.

The Court: Is there any question about it?

Mr. Adcock: No, but this goes to show what was earned by the property.

The Court: What is the answer to the question?

Mr. Adcock: "Yes; a small note."

"Q. How much was that note?

"A. I think it was $47,000."

The Court: What is the answer?

Mr. Goldberg: (Reading:) "I think it was $47,000."

"Q. And was the balance of the purchase price paid in cash at that time?

"A. Not counting the note? You mean the rest?

"Q. Yes.

"A Yes.

1328 "Q. And when was the note paid, if at all?

"A. Well, it has been paid. Part of it I think was in 1937 and part of it was recently.

"Q. And the entire amount of the note has been paid?

"A. Yes."

Mr. Adcock: Have you got your copy? The next is an Exhibit with relation to the interest of the Bank.

Mr. McConnell: Yes.

Mr. Adcock: Do you have that here?

Mr. McConnell: No. They were both offered, and you objected.

Mr. Adcock: Is there any stipulation about it?

Mr. McConnell: Yes, that the property was bought and paid for.

Mr. Adcock: Yes.

"Q. Was there a bill of sale given by your father and mother with respect to any equipment or personal property located in the theatre, or in any other buildings?

"A. There might be.

"Q. You don't remember about that?

"A. I can not recall, at this minute.

"Q. If there were, and you find any document, would you give it to Mr. McConnell, so he can show it to us?

1329 "A. All right.

"Q. Will you do that?

"A. Yes.

"Q. Do you know whether the Theatre property at that time was under a lease by your father and mother, to anybody?

"A. It wasn't.

"Q. Do you know whether he had any lease of the theatre property at that time?

"A. I don't know of any.

I would like to say something right now. When we were giving that description before, I went from the corner, that is, 6701 Stony to 6709 Stony, then I told you about the stores, and the lofts up there, then I believe I went from 1601 to 1625 East 67th, and this last description I gave, then 6704 to 12 Cornell. Well, then, did I include the Theatre in that description?

"Mr. Adcock: I think you did; yes, I think you did."

"Q. Well, I want to ask you about the lofts that you mentioned. Are they rented?

"A. No.

"Q. And they have not been rented for a number of years, have they?

"A. Well, they have been rented off and on.

"Q. None of them are occupied now?

1330 "A. Not at the present time.

"Q. And how long has that condition existed?

"A. Oh, three or four years.

"Q. How did you happen, you and your brother and sisters, happen to buy this property?

"A. We wanted to buy it.

"Q. Well, what negotiations were had between your father and your partners with respect to the purchase and sale of the property?

"A. What conversation did you say?

"Q. Yes; how did it arise?

"A. Well, we had money, and we wanted a good place to put it, so we figured we would like to buy this property.

"Q. Did you or your brother, or anyone of your sisters, first bring up the question of your father selling to you four and you purchasing it?

"A. I don't just remember now. That was a long time ago. We probably did.

"Q. What is your best recollection about it, whether you took it up first, or did your father take it up first?

"A. I could not recall exactly one way or another, right now.

"Q. You said you had money. Had you been in 1331 any business prior to that time?

"A. No active business, no, sir.

"Q. Had you any occupation by which you earned money?

"A. No.

"Q. Or your brother John E. Bloom, prior to that time?

"A. Not that I know of. Well, he may have earned some money. I couldn't say if he did or not.

"Q. Do you know whether it was of any considerable amount, or whether it was a small amount?

"A. I don't know what he has done all his life. I suppose it was a moderate amount.

"Q. Until the last couple of years or so he has lived in Chicago, has he not?

"A. Yes.

"Q. And you saw him frequently?

"A. Yes.

"Q. Is that so?

"A. Yes.

"Q. Where did you get the money that you say you had, then?

"A. Well, for many years prior to 1936 my father and mother gave us children money, and we also got money from the securities we had on the Country Club Hotel.

"Q. That was from certain stocks or bonds that you owned on the Country Club Hotel?

1332 "A. Yes.

"Q. And so far as you know, your brother and your two sisters obtained their money in the same way that you had, is that correct?

"A. Yes.

"Q. Did you have any appraisal made of the property that you purchased at that time?

"A. Yes, I believe there was.

"Q. Who made the appraisal?

"A. I can not tell you. I don't know right now, but I know there was an appraisal. I can remember positively there was an appraisal made.

"Q. Was it made by a real estate man?

"A. I believe so.

"Q. Do you know whether there was an separate appraisal made of the theatre portion of the property?

"A. No, sir, I don't.

"Q. In the payment of the note of $47,000, where did you get the money to pay that note?

"A. Well, we had money. We got—we got money from the sale of the Country Club Hotel. Our stock there was valuable, and we also had other money.

"Q. Has any of the money that was derived from the operation of the property, or income of the property which you have mentioned, the theatre and the buildings,

1333 and so forth, used in the payment of that note, do you know?

"A. It could have been.

"Q. What is that?

"A. It could have been.

"Q. In connection with the business of operating a theatre, a motion picture theatre, what did the partnership have to do with that, that is, the partnership, the individuals of the partnership?

"A. They didn't have very much to do with it. I was probably the—well, I was the partner that was delegated to see to it that things were operating smoothly, and the only acts that I had to do were with some small bookkeeping. I was making the social security, or writing checks, and things like that. The rest of the operation was given to Mr. Dick Salkin and to a real estate agent who handled the building part.

"Q. Who was the real estate agent?

"A. Well, there has been several.

"Q. And you are referring, when you speak of real estate agent, to some one who made arrangements for the lease of the property other than this property that was devoted to theatre purposes, is that right?

"A. Yes.

1334. "Q. And various real estate agents, I assume, brought tenants to you?

"A. No. The agent in charge always got the tenant, I believe.

"Q. Well, who was the agent in charge?

"A. Well, there has been several since 1936. Do you want to know their names?

"Q. Well, I am not particular; but there have been several of them?

"A. Yes.

"Q. They had nothing to do with the operations of the theatre, did they?

"A. No, they did not.

"Q. Or the property, had nothing to do with the property on which the Theatre building is located, or the Theatre building itself?

"A. That is right.

"Q. You have described, I believe, in a general way, what you do with respect to the operation of the Theatre. Does your brother John E. Bloom do anything as a partner?

"A. He doesn't now.

"Q. In connection with that?

"A. Not now.

"Q. How long since has he done nothing?

1335 "A. Well, since, oh, about January or December, 19— I mean December, 1941, or January, 1942.

"Q. Prior to that time what did he do?

"A. Prior to that time I just had him in for a couple of months, and just showed him what was going on. I mean what I did, my little bookkeeping duties, and things of that nature.

"Q. What does Mr. Salkin do; he manages the Theatre, does he?

"A. Yes.

"Q. And the Theatre business?

"A. Yes.

"Q. Can you describe in a general way what he does and has done during the period that your partnership has been in existence?

"Q. Well, he has had the entire control of the physical operation of it; that is, the management of it. He buys the film, and he sees that it is put on the screen properly, and sees that the money is taken in for the admissions, and put in the bank, and he sees that the Theatre is kept up correctly.

"Q. He attends to all of that, does he?

"A. Yes.

"Q. He signs such contracts as may be necessary to be signed in connection with the operation of the theatre, is that correct?

1336 "A. Yes.

"Q. Do you know what the net income of the theatre has been, the theatre business, since November 1st, 1936?

"A. No.

"Q. Do you know what the net income of the property devoted to other purposes than theatre has been?

"A. No.

"Q. Do you know what the income of all that property has been, that is; the Theatre business and the property, the other property than the Theatre property?

"A. No.

"Q. No, including the other property, the business, the operation of all the property; you don't know what it has been?

"A. Since 1936?

"Q. Yes.

"A. No.

"Q. Do you know how much you and the other partners have drawn from the partnership business, or withdrawn from the partnership business, during the period from say November 1st, 1936, to the end of the year 1942?

"A. I have a good recollection.

"Q. How much?

"A. If I am not mistaken, it was about $57,000

1237 apiece.

"Q. Yes. Now, what period are you covering?

"A. From November 1st, 1936, up to the present time.

"Q. Do you remember how much—do you know how much you withdrew during the year 1943?

"A. Yes. $10,000.
"Q. That is apiece?
"A. Yes.
"Q. And for a number of years prior to that you had withdrawn $10,000 apiece?
"A. No, I wouldn't say that.
"Q. Since 1938 you have, haven't you?
"A. No. In 1942 we withdrew nothing."
"Q. That was withdrawn from the partnership, wasn't it? That is, the amounts that you have stated that were withdrawn?
"A. Well, from funds of the Theatre and the building.
"Q. The Theatre and the building?
"A. Yes.
"Q. Did you have any bookkeeping audit your partnership books?
"A. Yes.
"Q. Have you the balance sheet for 1943?
"A. No.
"Q. Have you seen any such balance sheet?
"A. No.
1338 "Q. Have you seen any balance sheet for the partnership reflecting its business for the year 1942?
"A. Yes.
"Q. And for the previous years?
"A. Yes.
"Q. Could you produce those and give them to Mr. McConnell, so he can let me see them?
"A. I imagine—
"Q. What is that?
"A. I imagine the auditor has them.
"Q. You have seen them, though, have you?
"A. Yes."

Mr. Adcock: Then Mr. McConnell said: "I think that I can get them for you." And then:

"Mr. Adcock: Yes. All right."
"Q. Did your father advise you to purchase this property?
"A. He might have. I couldn't recall exactly.
"Q. Do you know whether you or your brother and sisters, at the time of the purchase, talked with anybody else about the advisability of purchasing this property at the price mentioned?

"A. Do I know what? If my brother and sisters talked to—

"Q. Anybody else, about the advisability of pur-
1339 chasing it?

"A. Besides who?

"Q. Besides your father?

"A. We might have talked among ourselves. We might have talked to real estate men.

"Q. Do you remember whether you did or not?

"A. I can not recall now.

"Q. Did you talk to Mr. Richard Salkin about the operation of the Theatre, the business, how the Theatre was doing or had been—

"A. Yes.

"Q. (Continuing.) —prior to that time?

"A. Yes.

"Q. Before you purchased it?

"A. Yes.

"Q. Did he advise you to purchase the property?

"A. No, not to my knowledge.

"Q. What did you know personally about the operation of the theatre business prior to the time you purchased the property?

"A. Well, I know it has been there a very long time, and it has been profitable.

"Q. How did you know that?

"A. Well, my parents had probably told me.

"Q. Well, did they or did they not tell you?

"A. Yes, they did.

1340 "Q. That is, the theatre business had been profitable up to that time, is that correct?

"A. Yes, sir.

"Q. At the time you purchased the property, that is, November 1st, 1936, did you know that Balaban & Katz had adopted the policy of double feature programs in certain of their theatres, the Tivoli, and the Southtown, and others?

"A. I might have known it at the time.

"Q. Well, what do you say, do you say you did or did not?

"A. I can not recall now. I say we might have known it then, but I don't remember now if I knew then or now. That was seven years ago, or eight.

"Q. Are you familiar with the Complaint in this case?

"A. I have read it.

"Q. You read it before I take it, it was filed. Here it is, if you want to look at it, a copy of it.

Do you know that you and your brother and two sisters as partners, are suing five distributors, producers of motion pictures, and two exhibitors of motion pictures; do you know?

"A. Yes.

"Q. And the names of them are on the front of the complaint which you have before you, a copy of it?

1341 "A. Yes.

"Q. You are making certain claim for damages due to certain acts, as alleged in the Complaint, as done by the different defendants, is that true?

"A. Yes."

Mr. Adcock: Now, I think we will leave that out. There is no need of reading that portion there about damages.

Mr. McConnell: I don't know why not.

Mr. Adcock: If you want me to read it, I will.

Mr. McConnell: Sure. It is germane.

Mr. Adcock: (Reading.)

"Q. Can you state how you make up your claim for damages, and what the claim for damages is?

"A. What do you want me to do?

"Q. What is your claim for damages?

"A. Well, it is stated in the Complaint, I believe.

"Q. Well, can you state it in your own language?

"A. We state that there is, is or had been, a conspiracy against us by these companies, and that we want—that we want relief from it, and we want damages.

"Q. And what are the damages that you seek to recover?

"A. Do you mean as far as money goes?

1342 "Q. Yes.

"A. It is $120,000 trebled, I guess it is, and plus the lawyer's fees of $40,000.

"Q. And how do you make up the amount of $120,000; how is that arrived at?

"A. Well, I believe it is the amount of business that we figure that we lost through this conspiracy that has been put in action against us.

"Q. And how do you calculate that claim for damages?

"A. Well, the property, the Theatre property was doing good when we bought it and prior to the time we

bought it, and it has not been doing as well since; and as far as I know, it has been computed, just an estimate. I could not guarantee that, though.

"Q. In other words, that is made up, as I gather from your statement, of taking as a standard the operation prior to November 1st, 1936, of the Theatre, and the income of the Theatre, after payment of the expenses, for some time, and taking that figure, and the difference between what you have actually made of your actual income since that time is your damage, is that right, according to your calculation?

"A. Yes.

"Q. Going back a minute to your purchase, the purchase price there was about—was $390,000 for the
1343 entire property, including the Theatre, is that right?

"A. Yes.

"Q. Was there any allocation of that $390,000 to the Theatre property, the Theatre building and the real estate, on which it is located, and the business of operating the Theatre there?

"A. What do you mean?

"Q. Well, in your negotiations with your father, with respect to the purchase, you reached a conclusion or an agreement of $390,000 for the whole business, is that correct?

"A. Yes.

"Q. Did you allocate any portion of that $390,000 to the Theatre portion of the property and the Theatre business?

"A. No.

"Q. And was any part of that $390,000 allocated to good will of the Theatre business?

"A. I imagine it was.

"Q. Well, do you remember? Imagination is not evidence. I am trying to get your recollection.

"A. It would be included. We did not pay anything extra, above the three hundred and ninety thousand for the good will. I presume that it was included.

"Q. It was included, I understand that, but was
1344 there any specific sum or any specific amount of this $390,000 allocated to the good will of the theatre business?

"A. Not to my knowledge right now.

"Q. When you bought the property that has been

mentioned, the Theatre property and the other property, were you doing what you believed, what you understood to be what your father wanted you to do, and advised you to do?"

Mr. McConnell: I have an objection there. I object to the witness's belief. It is not material here what he had in his mind.

Mr. Adcock: Well, he talked to his father about it.

The Court: What is the answer?

Mr. Goldberg: (Reading:) "Did I believe, that I did, I personally or all of us partners"?

"Q. You take you yourself.

"A. Did I do what he advised?

"Q. And what he wanted you to do?

"A. Well, it could have been that way. I don't remember exactly."

Mr. McConnell: I move to strike out the witness's speculation about his state of mind.

The Court: I think we will leave it stand. It 1345 doesn't seem to me very important, one way or the other.

Mr. Adcock: (Reading:)

"Q. Did your father state to you and your co-partners, or your brother and two sisters, that the Theatre was doing a good business?

"A. Yes, he stated that.

"Q. At that time?

"A. Yes.

"Q. And that it had been doing a good business?

"A. Yes.

"Q. Is that right?

"A. Yes.

"Q. Did he say, did he state at that time what the income of the Theatre business had been, that is, the net income after the payment of operating expenses, taxes, and so forth?

"A. Yes, he did.

"Q. What did he say it was?

"A. Well, now you asked me if he said it. He did. Now, you are asking me what it was?

"Q. Yes.

"A. That I cannot tell you exactly. I don't know what he said at that—exactly what it was. I know he said it had been doing well.

"Q. Did he tell you at that time, at the time you purchased the property, at the time the partnership
1346 was formed or before that for a number of years his Manager of the Theatre, Mr. Salkin, and he had been trying to obtain a better playing position or run for the Jackson Park Theatre than first week or general release, where it had been playing for some years prior to the year 1930, until the time you and your brother and sisters purchased it?

"A. Did he say that at November, 1936?

"Q. Yes.

"A. I can not recall if he did or not.

"Q. Do you remember the subject being discussed?

"A. No, I don't.

"Q. Did he tell you at that time before you purchased this property that he and his Manager, Mr. Salkin, who managed the property for a long time, believed that the defendant distributors in this case, and perhaps others, had conspired and agreed to establish a release system in Chicago for the exhibition of motion pictures in various motion picture theatres in Chicago?

"A. Well, I don't understand that question.

"Mr. Adcock: Well, read it.

(Question read).

"A. My answer is 'No'.

"Mr. Adcock: Q. He did not talk to you, say
1347 anything to you on that subject before you purchased the property?

A. No.

"Q. Did he say anything to you at the time you purchased the property, or before, with respect to any conspiracy or agreement between distributors or producers of motion pictures, and others, with respect to their distribution of pictures, and fixing the playing positions and clearances of one theatre over others, or anything on that subject?

"A. Well, I can not recall now of any conversations of that type.

"Q. Your best recollection is that there was no conversations on that subject?

"A. I say there might have been, but as far as I can tell you right now, I can't recall. There could either have been, or could not have been.

"Q. And you haven't any recollection about it al all?

"A. No.

"Q. Did you have any conversation with Richard Salkin on that subject, at the time you purchased or before you purchased the property?

"A. No.

"Q. After 1936 when was the first time, if you can remember the date approximately, that you had any
1348 conversation with anyone with respect to the business of the Jackson Park Theatre, as to whether it was good or bad?

"A. Why, I had conversations with my brother Jack and with Richard Salkin. I may have—I think I have had. —yes, I have had conversations, with the auditor and with the other partners.

"Q. And when was that?

"A. At various times.

"Q. When is the first time, I am asking you?

"A. That we talked about business?

"Q. On that subject, with Mr. Salkin?

"A. About what, about the business?

"Q. About the condition of the business, whether it was good or bad?

"A. Why, I talked with those people off and on, maybe every—during the year, during each year.

"Q. That is, 1937, 1938, and each year thereafter, is that correct?

"A. Yes.

"Q. And was the subject of your conversations poor business or good business of the Theatre?

"A. Both.

"Q. When is the first time you had any conversation with any attorney with respect—"

1349 Mr. Adcock: I don't care about reading this, unless you want me to.

Mr. McConnell: I don't know that it is important. I am employed in the case.

Mr. Adcock: Wait a minute.

Mr. McConnell: I don't know that it is important.

Mr. Adcock: Now, that you have made that statement, I will read it. I was asking you whether you wanted it read or not.

Mr. McConnell: I don't care whether you read it or not. It doesn't make any difference to me.

Mr. Adcock: Well, I might as well read it:

"Q. When is the first time you had any conversation with any attorney with respect to the bringing of a suit of the character of the suit that has been brought by you and your other partners that I have mentioned?

"A. 1941.

"Q. Do you know what part of the year, when in 1941?

"A. Well, it was the last part of 1941.

"Q. And who were present?

"A. I couldn't—I don't know.

"Q. What attorney did you talk to?

"A. Mr. McConnell.

1350 "Q. Were any of your partners present?

"A. I don't know.

"Q. You do not have any recollection about that?

"A. Well, my brother may have been. I don't know exactly.

"Q. That is, you refer to John E. Bloom?

"A. Yes.

"Q. And were any of your sisters present?

"A. No.

"Q. Did you have any conversation at any time prior to the time this suit was instituted, with Mr. McConnell, with respect to bringing the suit, where all of your partners were present?

"A. Where we would all be in conference with Mr. McConnell?

"Q. Yes.

"A. No.

"Q. When any one or more of your partners were present?

"A. My brother was present, as far as I remember, once.

"Q. Do you remember having any discussion or talks with Mr. Salkin or with Mr. McConnell with respect to the Jackson Park moving up to C week and at the same time the Jeffery moving up to B week and the Hamilton Theatre moving to first week, and I will say during

1351 the period from say February, 1940, to July, 1942?

"A. I have had conversations with Mr. Salkin about the Hamilton moving up a week, and the Jackson Park moving up a week, but I don't recall that the Jeffery was to move up a week in that conversation.

"Q. Did he tell you that he had had any conversation with Mr. Coston, representing Warner's, on that subject; that is, did Mr. Salkin tell you?

"A. I do not know if it was Mr. Coston, but he had conversation with Warner Bros."

1352 "Q. Did he tell you at any time, prior to the time this suit was instituted, in substance, that the plan that he had talked with Warners about, whereby the Jackson Park was to move up to C week and the Hamilton to first week, had fallen through and could not be arranged?

"A. He told me that his plan, which you mention, had fallen through, but I don't know if it was, right now, that time, if it was before suit was instituted or not.

"Q. You have a recollection—I couldn't quite hear you. Do you have a recollection as to whether he told you that before the suit was instituted?

"A. Well, it may have been right before or right after, in that neighborhood of time. I can't remember the exact date.

"Q. Do you know whether or not the falling through of the plan or the failure to get that plan of moving the Jackson Park to C week and the Hamilton to first week, had anything to do with your determination that this suit should be instituted, that is, you and your partners?

"A. I cannot myself say exactly.

1353 "Q. Well, would you say it did or did not?

"A. Well, I say my brother Jack might know.

"Q. Did he talk to you, say anything; did you have any discussion with him about that?

"A. Oh, yes.

"Q. Did you have any meeting between the partners at which it was determined to bring suit, bring this suit?

"A. Well, we didn't have a meeting where all four partners were together, but what will generally happen in a case where something comes up, why, either I or Jack would converse with my sisters, and we would intermingle our conversation maybe at different times; it was not possible for us always to be together at the same time.

"Q. Then there was not any meeting, but it was arranged, determined upon in some other way, is that correct?

"A. In talks.

"Q. Well, do you remember now how it was, what machinery was used by which the partners agreed and determined to bring this suit?

"A. Well, Jack had talks with me, and we talked it over with our sisters probably at some time, and we

1354 talked it over with Mr. Salkin.

"Q. Did you talk it over with your father?

"A. I think we did, yes.

"Q. In your talks with Jack was this plan of moving the Jackson Park up to C week, and the Hamilton to first week, discussed?

"A. Yes.

"Q. And was the failure to consummate that plan, carry out that plan, or put that plan into effect, discussed with your brother Jack?

"A. Yes.

"Q. And do you remember when that was with respect to the time this suit was instituted?

"A. Well, as far as I can remember, it would be between September, 1941, and December, 1941.

"Q. That is your best recollection, is it?

"A. Yes.

"Q. Do you remember the last conversation you had with him on that subject, that is, of this plan not going through of moving the Jackson Park up and the Hamilton up?

"A. No, I can't remember that, the last conversation."

Mr. Adcock: Let's see, what is the next page? 1355 661, is it? Then Mr. Seeley asked, interrogated: (Reading)

"Mr. Seeley: Q. Mr. Bloom, at the time you signed the contract for the purchase of the Jackson Park building, which is identified as Defendants' Exhibit 13-A, were you of the opinion that $390,000 was a fair price for the property that you and your partners were purchasing?"

Mr. McConnell: I have an objection there. I waive the objection.

Mr. Adcock: (Reading)

"A. Yes, I think it was a fair price.

"Q. Did you then think it was a fair price?"

Mr. McConnell: I waive my objection.

Mr. Adcock: (Reading)

"A. Yes.

"Mr. Seeley: Q. What factors did you take into consideration in arriving at that opinion?

"A. Well, it would be hard for me to say right now the factors I took in at that time. I might have taken in quite a few, a lot of them.

"Q. I would like to have you disregard those you might have taken in, and tell us those which you now remember that you took into consideration?"

1356 Mr. Adcock: Mr. Seeley, I think I will ask you to read those other questions. They are your questions.

Mr. Seeley: Suppose you go right ahead. That is all right.

Mr. Adcock: Well, suppose you read it.

Mr. Seeley: Have you got the answer, Mr. Goldberg?

Mr. Goldberg: Yes.

Mr. Seeley: (Reading)

"A. Well, I would have a hard time in answering that question unless I did some supposing of what I thought.

"Mr. Seeley: Q. Do you have any recollection at the present time of what you based your opinion on at that time?

"A. I wouldn't say I had any recolleection, that I know of.

"Q. What investigation, if any, did you make at that time as to the value of the property that you and your partners were buying?

"A. What do you mean by that, what investigation, investigating this particular property or other prop-
1357 erties?

"Q. Any facts to which you referred in connection with reaching an opinion as to the value of the property which you and your partners bought?

"A. Well, as I just said, I could not exactly recollect. I can imagine, or suppose.

"Q. Is your answer you have no recollection at the present time of which you took into consideration?

"A. Well, Mr. Seeley, I can't just exactly remember what I thought of at the present—at that particular time; but there would come in things such as the size and the age of the property, and what it had been doing, and what it should do, and so forth.

"Q. All right. You told us the size of the property. What was the age of the property?

"A. Well, it was built in 1915 or '16.

"Q. When you say what it had been doing, do you refer to the earnings which the property had enjoyed?

"A. That is what I referred to.

"Q. Over what period of time prior to 1936 did you take the earnings into consideration?

1358 "A. I could not tell you exactly, because I don't remember.

"Q. Can you tell us approximately?

"A. I could not tell you approximately.

"Q. Can you tell us what the earnings of the property were in any year prior to November 1st, 1936?

"A. I can tell you pretty close.

"Q. Do so.

"A. Well, as near as I can estimate, why, it was forty-four thousand in 1934, and 1935, and, well, I think in 1936 was, including the time my father and mother owned it, and including the time that us four partners owned it, it was over $50,000.

"Q. What part of these earnings is attributable to the theatre business, if you remember?

"A. Well, the figures I just mentioned were net profit for the theatre itself.

"Q. Oh, I see. And in considering what the property might do thereafter, what did you take into consideration?

"A. Do you mean did I take into consideration—Did I think the earnings of the theatre should go up or down?

1359 "Q. I don't know. I am asking you what you took into consideration. You mentioned the fact that one of the things that you based your opinion on is what the property might do after you bought it, and I am asking you what you had in mind along that line.

"A. Well, we assumed it should do something—it should do rather near what it had been doing.

"Q. Did you know at the time that you took the property over what the playing position of the theatre was?

"A. Well, you mean in connection with other theatres?

"Q. Yes.

"A. Yes.

"Q. Did you assume, in estimating the value of the property, that it would continue to have that same playing position?

"A. I don't know if we assumed that or not.

"Q. Did you give it any thought?

"A. I don't believe we did.

"Q. And were you at all concerned about it?

"A. I don't believe we were, at the time we bought it.

1360 "Q. Did you have any conversation with your father on that subject at about the time you bought the property?

"A. As far as I remember, I didn't.

"Q. Now, do you recall anything else that entered into your consideration as to what the property was worth?

"A. Well, I do know that in—it was either 1934 or 1935, or 1936, that parts of the interior and parts of the exterior of the theatre were remodeled, modernized; and we thought it would—we thought the house itself presented a good appearance, both in and out, and that is as far as that goes.

"Q. At the time that you bought that property did you know anything at all about the business of exhibiting motion pictures?

"A. That is an awful broad question. Yes, I knew something about the exhibition of motion pictures.

"Q. Did you know that the films which a theatre exhibits are licensed from motion picture distributors?

"A. Yes.

1361 "Q. Did you know for what period of time those license agreements ran?

"A. From what periods of time?

"Q. For how long at a time those license agreements ran?

"A. Well, I know that you bought a picture, and it would run three days or four days, some two days.

"Q. Do you know whether the Jackson Park Theatre had been buying one picture at a time or more than one at a time?

"A. It had been buying more than one at a time in practically every instance that I know of.

"Q. Did you know anything about what contracts for films were in effect on November 1st, 1936?

"A. I can't remember now.

"Q. Do you remember having any discussion on that subject at all?

"A. No, I can't.

"Q. Was there any period of time, either before or after November, 1936, when your brother had anything to do with the operation of the Jackson Park Theatre?

"A. He never had anything to do with it, outside
1362 of discussions with myself and Richard, but—Richard Salkin, but as far as anything else, he never did.

"Q. Did those discussions take place, as far as you know, after you acquired the property?

"A. Well, you just said 1936.

"Q. I said before or after.

"A. Now, what is the question, please?

"Q. I now want to know if all these conversations took place after November 1st, 1936, as far as you know?

"A. The conversations we had in regards to operating it—well, after we got it operating, we did, we did possibly have some conversations before that, but I could not say exactly.

"Q. Do you recall any?

"A. You mean conversations?

"Q. Before, about the theatre, about the operation of the theatre?

"A. No, I do not.

"Q. Did you have any conversations with your father before November 1st, 1936, about the operations of the theatre?

"A. Well, I must have.

1363 "Q. Do you recall whether you did or not?

"A. I can't recall, no, sir.

"Q. How often after November 1st, 1936, did you talk with your brother about the operations of the theatre?

"A. Many times.

"Q. About how frequently?

"A. Well, sometimes once a week, sometimes twice a week, and sometimes maybe only three or four times a month.

"Q. What would you talk about on those occasions?

"A. Well, we would talk about the admissions, how the revenue was coming along, and matters pertaining to operating the theatre.

"Q. Would you talk about the causes of the revenue either increasing or decreasing from time to time?

"A. I imagine we did.

"Q. Do you know whether you did or not?

"A. Yes, we probably did.

"Q. Well, what was the subject of any one of those conversations, that you remember?

"A. Well, we did talk once about this, the Hamilton and the Jackson Park moving up, and we talked 1364 about the fact that we could not get pictures at an earlier date than we did, because we were not allowed, we were not—they would not allot, the distributors would not sell them to us.

"Q. When did you first have a talk about that?

"A. In 1940 or '41.

"Q. Did you bring that to your brother's attention, or did he bring it to your attention?

"A. I don't know.

"Q. Had you talked with anybody on that subject before you talked to your brother about it?

"A. I don't think so. Might have talked with Richard Salkin either before or after. We may have had a discussion, the three of us.

"Q. What is your recollection as to whether you did talk to Richard Salkin before you talked to your brother about it?

"A. Well, my recollection is that I talked to my brother about it.

"Q. First, before you talked to Mr. Salkin?

"A. That is my recollection.

"Q. As near as you can remember, what did you say to your brother, and what did he say to you?

1365 "A. I cannot recall that at all. It was too far back.

"Q. How far back was it, about 1940, did you say?

"A. Yes, sir.

"Q. How did you come to know anything about the ability or inability of the Jackson Park Theatre to get pictures, at the time you talked to your brother; what was the source of your information?

"A. Conversations with Mr. Richard Salkin.

"Q. When?

"A. I don't know the exact dates.

"Q. Approximately when?

"A. I couldn't tell you. I don't know.

"Q. How often did you talk to Mr. Salkin on that subject?

"A. Well, anywheres from three to six, seven times.

"Q. Over what period of time?

"A. I cannot do any more than estimate or guess.

"Q. What is your best recollection, leaving the guessing out of it?

"A. Six months to a year.

1366 "Q. Before you talked to your brother, is that what you are telling me?

"A. No, that is not what I meant. I meant did I talk to him about that.

"Q. Yes. I am not quite clear. When was this six months or a year that you mentioned?

"A. Well, I would say it was in 1940, or '41.

"Q. I see. Did you have any conversations with your father on the subject of the availability of films to the Jackson Park Theatre before you talked to your brother on that subject?

"A. I don't think so.

"Q. Did you ever have anything to do with negotiating film license agreements for the Jackson Park Theatre, with distributors?

"A. No.

"Q. Did you ever go along with Mr. Salkin or anyone else while those contracts were being negotiated?

"A. Never.

"Q. Did you examine the contracts before they were signed?

"A. No.

"Q. Do you know if anyone besides Mr. Salkin 1367 did examine the contracts before they were signed?

"A. I don't know.

"Q. What, if any, part did your father play in the operation of the Jackson Park Theatre after November 1, 1936?

"A. None, except sometimes he would ask us how things were going.

"Q. Did he ever go down to the theatre office to check up on things?

"A. No. He came to see me, and he talked to me sometimes.

"Q. Did he leave the management of the property entirely up to you and your brothers and sisters, and your hired managers?

"A. He couldn't leave it to us, because we owned it; he had nothing to do with it.

"Q. Well, he had nothing to do with it. That is what I wanted to get at.

"A. Not after 1936."

Mr. Seeley: I will skip what comes next, unless you want me to read it.

Mr. McConnell: I think it should be skipped.

Mr. Seeley: Now, in the middle of page 673 1368 well, I think that has been covered. Those are all of my questions that I think are important.

Mr. Adcock: Do you want me to read?

Mr. Seeley: There are some questions that I asked there, a few there.

Mr. McConnell: I think you ought to finish it.

Mr. Seeley: All right. Page 673. (Reading:)

"Q. When did you first consult Mr. McConnell in connection with the bringing of this suit?

"A. Well, it was in the spring of 1942, I believe.

"Q. Did you have any conversation with your father on the subject of bringing this suit?

"A. I may have.

"Q. What is your best recollection as to whether you had or not?

"A. Well, as far as I remember, my brother and I said that we thought wrong had been done us, and that we wanted to bring a suit against the people we had brought it against.

"Q. What did your father say?

"A. Well, he said he thought it might work out; he said we might bring suit.

"Q. Did he say anything else?

1369 "A. Not to my knowledge or remembrance."

Mr. Seeley: I don't think there is anything in your further questions, Mr. Adcock, that has not been covered or skipped.

Mr. Adcock: That is right.

The Court: Suppose we take a recess for about ten minutes.

(A short recess was taken.)

1370 WALTER IMMERMAN, produced as a witness on behalf of Balaban & Katz Corporation, having been previously sworn, resumed the stand and testified further:

Direct Examination by Mr. Adcock.

Q. Mr. Immerman, you have been sworn as a witness here?

A. Yes.

Q. And testified?

A. Yes.

Q. You described, as I remember it, in your last examination, the business since about 1925 or '26, when you became manager of the Chicago Theatre?

A. Yes.

Q. What did you do prior to that time?

A. I was engaged in the manufacture and distribution of oxygen and acetylene gases.

Mr. Adcock: I will ask that this document be marked Balaban & Katz Exhibit 3 for identification.

(Said document so marked by reporter.)

Q. I show you a document which has been marked Balaban & Katz Exhibit 3 for identification, which purports to be some photographs of theatres, and ask you whether or not those photographs are correct repre-
1371 sentations of different views of the Tivoli Theatre, the Tower Theatre, the Maryland Theatre, and the Jackson Park Theatre?

A. There are pictures here of the Tivoli, inside and outside.

Q. All right.

A. And the Tower, the Maryland, and the Jackson Park. That is all.

Mr. Adcock: I offer the pictures in evidence as Exhibit 3 for identification.

The Court: Any objection?

Mr. Adcock: I don't believe counsel has seen them before.

Mr. McConnell: I have no objection.

The Court: They may be admitted.

(Whereupon the said document so offered was received in evidence as Balaban & Katz Exhibit 3, and is in words and figures, as follows, to-wit:)

1372 Mr. Adcock: Q. Will you take those and check up each theatre that appears in this book, Exhibit 3, and state what views they are? What is shown on each one; that is, take each theatre. Take the first one.

The Witness: A. The first picture is the Tivoli Theatre, front view exterior.

The second picture is the lobby of the Tivoli Theatre.

The third picture is the auditorium, showing the main floor, balcony and mezzanine of the Tivoli Theatre. It is a side view.

The fourth picture is a face view of the auditorium looking from the stage into the audience. There is no audience, just seats.

The next picture is the Tivoli Theatre, the upper part of the balcony, facing the stage.

The next picture is the entire theatre, a picture of what we call the grand stairway in the lobby.

The next picture is a picture of the Tower Theatre foyer.

The next picture is the Tower Theatre auditorium, from the stage facing the audience; and the next one, re-
1373 versing, from the audience to the stage.

The next picture is the front of the Maryland Theatre, the camera facing east on 63rd Street outside.

The next one is a front view of the Maryland from across the street, the camera facing south.

The next picture is a picture of the front of the Maryland, including the boxoffice and the east side of the entrance lobby.

The next one is a front view of the Maryland Theatre, showing the box office and a west view of the entrance lobby.

The next picture is a picture of the Maryland lobby.

The next one is a picture of the auditorium from the rear, facing the stage.

The next picture is the front of the Jackson Park Theatre.

The next one is marked "Jackson Park Theatre" and is a picture of the auditorium from the rear, facing the stage.

The next picture is a picture of the foyer of the Jackson Park Theatre.

Q. Will you take that exhibit there—perhaps you
1374 can use it. How long has Balaban & Katz Corporation been in the business of operating theatres?

A. How long has it been engaged in the business of operating theatres?

Q. Yes.

Mr. Adcock: Is there any objection to letting the jury have this book?

The Court: Not so far as I know.

Mr. Adcock: (Handing Exhibit 3 to the jury.)

Q. Where shall I start? Is there an answer?

The Court: You sort of broke into the answer.

The Witness: A. I don't know exactly the first year of Balaban & Katz. I recall they celebrated their twenty-fifth anniversary some two or three years ago.

Mr. Adcock: Q. Do you know the name of the theatre they first built and operated?

A. I understand it was the Central Park Theatre on 12th Street.

Q. Approximately how many theatres do they operate now in the city of Chicago?

A. About forty-seven to fifty.

Q. Do you know approximately how many they
1375 operate in different so-called runs, or how many are played in the playing position of the Loop run?

A. First run Chicago?

Q. Yes.

A. Yes, I should know.

Q. I think if you want to, you can refer to the exhibit.

A. I can go through the Loop without referring to anything. In Chicago we have six theatres.

Q. Will you name them?

A. We have six first run theatres: The Chicago, the State-Lake, Roosevelt, United Artists, Apollo, and Garrick.

Q. Are there any other first run Loop theatres besides the ones you mentioned?

A. Yes.

Q. What are they?

A. Palace, Woods, Oriental, the Playhouse, Studio, and now the Grand, and occasionally the Monroe and Rialto.

Q. How many theatres play in A pre-release weeks outside of the Tivoli which you mentioned?

A. Operated by us?

Q. Yes, operated by you.

A. On the South Side, the Southtown; Marbro, Harding, Granada, Uptown, and Riviera, in the city of Chicago.

1376 Q. Do you have any theatres operating in what is called B pre-release weeks?

A. Yes.

Q. How many are there of those?

A. I believe there are ten.

Q. Do you have any operating in what is called C pre-release week?

A. Yes.

Q. How many?

A. I believe ten or eleven.

Q. And in other runs below that, have you theatres operating?

A. Yes, sir.

Q. Those are shown on that Plaintiffs' Exhibit 45; that is, the different theatres that operate in different runs, is that correct?

A. All our theatres are on this sheet, yes, sir.

Q. Since you have been there, I believe you said, in

1930, will you describe what your duties have been, mentioning what your position is, what you do in the operation of these theatres?

A. Beginning in 1930, for the first year, I did not have as much to do with the buying of films as I do now, because Mr. Max Balaban was taking care of it, who died about that time. Aside from that, I have been doing
1377 it since then, of course, 1931. I am sure of that. They call me the general manager. I supervise all functions of operation. There are many of them.

Q. Is your principal duty the matter of buying film?

A. It is a very important part of my duties.

Q. What other things have you done or do you do in connection with the operation of the theatres?

A. I supervise the purchasing of all things used, advertising, employment, maintenance, construction, reconstruction, decorating, and electrical maintenance. I believe I have covered everything.

Q. What has been done, just in a general way, with reference to the upkeep of the different theatres?

A. I don't understand your question.

Q. That is, keeping them in condition to operate.

A. What is being done?

Q. What has been done. Has there been any—

Mr. McConnell: Will you fix a time?

Mr. Adcock: During this period.

A. During the ten-year period?

Q. Yes.

A. Well, everything that could be done to keep
1378 the theatres in first class condition.

Q. Will you describe the air conditioning and refrigeration or cooling of the air that these theatres have, and the means for accomplishing those things.

A. There are various methods. There is one method, but various sources of cooling. The method of cooling the theatre is to distribute cool air. There are two ways that we use for cooling the air.

Q. What are they?

A. One of them is technically the compression of CO^2, in which an expansion is used to cool water, and water is used to cool the air. The air passes through the spray system and contracts the humidity of the air.

The other is more recently developed. Instead of using CO^2 gas, we use Freon gas. That is, we have been using

it up until now. The Government has restricted its use for the war period; not restricted, but have withdrawn the supply. This process eliminates the spray system to a degree, and uses a coil much like the coil of an ice-
1379 box, only much larger. The air passes over the coils, and as it passes over the coils, it is cooled and moisture is extracted by freezing.

Q. What is the effect as to the operation of that method in the cooling of the air or keeping it to an even degree of coolness?

A. It has a desirable effect. It makes it possible to control the temperature of the auditorium.

Q. What is the nature of the so-called method where water is used to cool the air or moist the air?

Mr. McConnell: I object to this, if the Court please. I don't think this witness is qualified as an engineer or an expert for cooling systems.

Mr. Adcock: I think he is.

The Court: What do you say to that objection?

Mr. Adcock: I think he is qualified, your Honor.

1380 Q. Well, have you had anything to do with their installation?

A. Yes.

Q. Their purchase?

A. Not physically, but the purchase and an understanding of their function and application.

Q. Then will you describe the so-called

A. Well, in using water to cool the air you first must have uniform temperature of the water. If you don't have uniform temperature of the water, you don't have uniform temperature of the air.

Q. How do you get uniform temperature of the water?

A. By having mechanical controls to regulate the freezing process.

Q. Well, is the water cooled?

A. Yes, maintained at a temperature of around 52 to 55 degrees.

Q. Then there is a refrigeration unit connected with the use of this system, is that correct?

A. Yes, a compressor.

Q. How many of the theatres of Balaban & Katz are air-conditioned and air-cooled?

1381 A. All of them.

Q. Since they have been operated by Balaban & Katz?

A. As long as I have been there.
Q. That is since 1930?
A. Yes.
Q. What is the nature of the seats and what is the character of the seats that are in the different theatres? Take, for instance, first,—not describing all of them, but say on the south side, exclusive of the Southtown?
A. Well, the Tivoli Theatre has a new seat which was put in about four or five years ago—may not be four years, possibly three, of the most recent design, manufactured by I think it is the International Seating Company. We thought it was the most comfortable seat available at the time we bought it. We studied it carefully. It is designed to—
Mr. McConnell: I move to strike the witness' thought. He was asked to describe the seats.
The Court: The latter part may be stricken.
Mr. Adcock: Yes, that may go out.
The Witness: Outside of the fact that the seat has a cushion and a back and a hinged seat, and the cushion
1382 is of sufficient depth to give comfort, and the back of proper pitch, which are the important factors in buying seats, and outside of the material which the seat is covered with.
Q. What can you say as to whether they are modern seats in those three theatres I am directing attention to?
A. I would say they were.
Q. Are they?
A. I would say they were.
Q. Has Balaban & Katz provided its theatres with paintings and art objects?
A. Yes, sir.
Q. Does the Balaban & Katz Corporation doing any advertising in connection with the operation of its theatres?
A. Yes, sir.
Q. What is the character of the advertising?
A. Newspaper advertising. That is, what do you mean by "character,"—the type?
Q. Well, I direct your attention to what may be called generally institutional advertising.
A. Oh, yes.
Q. What is the nature of that?
1383 A. Various forms of institutional advertising is used. By "forms" I mean various subjects are

brought before the public by our organization for the purpose of acquainting them with our efforts in their behalf; for instance, cooling, seating, quality of entertainment, quality of theatre, desirability of attendance at our theatres in preference to others. That is the purpose of the advertising, to hold our place as leaders in the industry here.

Q. What is the nature of the newspaper advertising? Is that of particular theatres or the pictures being played in the different theatres?

A. Both.

Q. Well, name the both of them.

A. Well, you asked me if we were advertising the theatres and the pictures?

Q. And the pictures. What is the nature of the advertising of the theatres and the pictures?

A. Well, you advertise the name of the theatre and the theatre in which the individual picture is being played that you advertise.

Q. That is where you find the list of the pictures being played in Chicago, in the different newspapers, and
1384 the pictures?

Mr. McConnell: I think the witness should be allowed to tell some of this. Counsel is doing a pretty good—

Mr. Adcock: Q. All right, where does that advertising appear?

A. It appears in the amusement section of the daily newspapers,—all of them.

Q. Are you familiar with the location of the Tivoli and the Tower Theatre and the Maryland Theatre?

A. Yes.

Q. Familiar with the location of the Jackson Park Theatre?

A. Yes.

Q. Will you describe the location, surroundings of the Maryland Theatre?

A. Well, the Maryland Theatre is—

Q. Where it is located?

A. Located east of Cottage Grove, half a block, 63rd Street. It is a street that has business houses on both sides all the way from a point west of Cottage Grove as far as Stony Island, and all types of stores, cafes, and

theatres,—three or four theatres, and all types of
1385 merchandising takes place on the street.

Q. And in what playing positions are the theatres on 63rd Street that you have mentioned, if you know?

A. Well, the Maryland is C week.

Q. Yes?

A. I think across the street is the Ark, formerly the Drexel. It is now in second week. There is the Lexington Theatre, first week; Star Theatre, in B week; there is the Woodlawn Theatre, and I believe that plays in third week. I think that is all. The Kimbark Theatre is right near the corner of 63rd Street, but it is not on 63rd Street. Kimbark Avenue.

Q. Is there a theatre near 63rd Street, on Cottage Grove Avenue, just north of 63rd?

A. Yes, north of the Tivoli, on the west side of the street, called the Midway.

Q. You are familiar with the location of the Jackson Park Theatre?

A. Yes, sir.

Q. And you are familiar with the Jackson Park Theatre itself?

A. That is true. I have visited it twice in the last two years—or five years, rather.

1386 Q. Do you, in connection with the operation of the different theatres, have any schools for the education of your employees? Do you maintain such?

A. We do not maintain them now.

Q. What has been your custom in the past, if there has been any?

A. A system of training employees before they were placed in line of duty.

Q. What has been the purpose of the education of them?

A. So that they would probably serve the public and protect our interests as well.

Q. Those are employees such as ushers and—

A. Ushers, managers, assistant managers, cashiers, janitors, porters, engineers,—everybody.

Q. Are you familiar with what is called, some times called "mixed policy" in the operation of theatres?

The Witness: I don't know what you are referring to.

Mr. Adcock: Well, whether its theatres are some times playing pictures in a certain run and another run
1387 during the same week.

The Witness: May I have the question again?
(Question read.)
The Witness: It has been done.
Mr. Adcock: Q. Would you describe that policy, if there is any such policy?
A. I don't know if there is one now, but it seems to me that I recall doing it myself, where the theatre would play in B week half of the week and C week the balance of the week.
Q. Is that usually done in connection with the operation of Balaban & Katz Theatres or was it an exception?
A. An exception.
Q. In your opinion is that a profitable way to operate a theatre?
A. The test proved that it was not.
Q. Why?
A. There are several reasons,—availability of product is one; the other one is that we find on analysis that most picture fans form habits, and the change of admission prices from one part of the week to another is confusing.
1388 Q. Do you negotiate—is there any particular time of the year when you have negotiated for your product?
A. What product?
Q. That is for the pictures that you desire to license from any particular distributor.
A. For any particular theatre?
Q. Yes, in the licensing of the picture.
A. It varies with the run somewhat. Currently there is no particular time. During the period when pictures were being sold in blocks, first run negotiations would start sixty, ninety days prior to the release of the first pictures of the particular company. Subsequent runs were negotiated later, in some cases within the two-week period.
Q. And during what time was it negotiated in that manner? That is, was it prior to about 1940 or '41?
A. I think 1940—'41, the 1941-42 season.
Q. Do you negotiate and arrange for the licensing of all of your Loop run pictures—theatres at the same time or substantially the same time. Did you?
A. Oh, no. Could not.
1389 Q. Well, was there any particular time in the season when you ever did that?
A. It happened about ninety days before, about July or August of each year.

Q. Then was the licensing for your other theatres taken up later?

A. Some times and some times it all transpired in the period of two weeks, three weeks.

Q. But during what period of the year did that usually take place?

A. In the period preceding July and ninety days.

Q. About ninety days?

A. Yes.

Q. Sometime in July, is that correct?

A. That is the first run. Subsequent run, as I have stated, sometimes negotiated at the same time within a period of two weeks or so and sometimes later.

Q. Were these negotiations with the different distributors individually?

A. Sure. Yes.

Mr. McConnell: Well, I object to his characterizing how the negotiations were.

Mr. Adcock: Q. Well, how were the negotiations
1390 taken up, with respect to whether it was two or three or more distributors or one distributor at one time?

A. One distributor at a time.

Q. Did you have any conversations or agreements with any other exhibitors than Balaban & Katz with reference to the manner in which you were to negotiate or license pictures at any time?

A. No.

Mr. Adcock: I think that is all.

Mr. McConnell: May I have those pictures that you had?

The Court: Pictures? The jurors have them.

Mr. Adcock: There may be some other questions I want to ask. There were certain questions the other day or yesterday or the day before—

Mr. McConnell: Suppose you finish before I start.

The Court: Well, suppose we take an adjournment. Maybe you can check up over the recess and see if there are some that you want to ask.

Mr. Adcock: Yes. I don't want to repeat the questions.

The Court: Take an adjournment until 10:30
1391 Monday morning.

(Whereupon the further hearing of the above entitled case was recessed until Monday, February 28, 1944, at 10:30 o'clock a.m.)

1392 IN THE DISTRICT COURT OF THE UNITED STATES.

Caption—)

Before Igoe, J., and J.

Monday, February 28, 1944, 10:30 o'clock A. M.

Court met pursuant to adjournment.

Present:

Mr. Korfist;
Mr. Adcock
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

Mr. Korfist: Your Honor, I would like to advise the Court, directly, for the purpose of the record, that Mr. McConnell is ill and will be unable to be present today, and I think tomorrow he will be here, but he advised me to advise the Court that he did not want to deter the
1393 orderly progress of this case, and suggests that I petition the Court that every cross-examination of the various witnesses offered by the defense here be deferred until he got back, and I expect he will be back Tuesday, that is tomorrow.

The Court: Is there any objection to that?

Mr. Adcock: No, not at all. The only thing is that may be on the direct examinations I might not have the witnesses ready on account of that.

The Court: Well, we will see.

Mr. Adcock: We will see how it works out that way.

The Court: When we adjourned Friday you said you might want to ask Mr. Immerman some more questions.

Mr. Adcock: I want to ask him some more, yes, your Honor.

The Court: I guess you are still on the stage, Mr. Immerman.

1394 WALTER IMMERMAN, a witness called on behalf of the defendant Balaban & Katz, Corporation, having been previously sworn, resumed the stand, was examined further and testified as follows:

Direct Examination (Cont'd) by Mr. Adcock.

Q. Mr. Immerman, when you first took up the work for Balaban & Katz in 1930, as Manager, General Manager, did you make any survey of the theatres of Balaban & Katz and theatres that were located near those theatres, or in competition with them?

A. Yes, sir.

Q. What was the nature of that survey?

A. In 1928 I was operating the Greater Chicago Theatres, and of course I became familiar with the locations of all theatres in Chicago, Balaban & Katz theatres, and those operated by others; and in 1930, after being gone a year, it did not take me long to renew or to establish my knowledge of these various theatres, and I made several trips around town, going to those that had been changed in some way, and observing those, of course, that had not been changed.

Q. You are referring to the Balaban & Katz

1395 theatres?

A. And studying of the playing position of the theatres in competition with our own theatres. That was the reason for making the trip in the first place.

Q. Did you make a survey of the transportation facilities and populations surrounding the different theatres at that time?

A. Not specifically. It was obvious, as you travel around from one theatre to another, just what those conditions were. I don't remember having made a record of it, or a mental record.

Q. Well, then, subsequent to that time what did you do, if anything, in connection with keeping in touch with the different theatres that you have mentioned?

A. From that time until now it was necessary that I make frequent visits to our own theatres, and into the neighborhoods of competition.

Q. Did you have anyone working under you, under your direction, who had to do with those problems?

A. Our operation is subdivided into districts, and we have district managers, who are given immediate charge, above the Manager, in between the executive officers and the Manager. There are four of these men.

1397 Q. You speak of the Manager. That is the Manager of a particular theatre?

A. Manager of the individual theatre.

Q. And each theatre has a Manager?

A. Yes, sir.

Q. And what are his duties?

A. His duties are, first, of course, to manage the theatre properly, and keep himself posted as to all the factors that are involved in the successful operation of the theatre, meaning the movements of people, business, in the community, keep in active touch with business developments, if there are any, and a close eye on his competitors, so that he can operate his theatre to the best advantage.

Q. Then you spoke of District Managers. Now, will you state how many District Managers you had for Chicago, during this period?

A. We have four.

Q. They had certain districts over which they had supervision?

A. The districts are divided into four groups. The one group covered the south side houses plus two in the Loop, and one District Manager covered the west side group, and another District Manager covers what

1397 we call the northwest group, and another District Manager covers the north side. In addition to that, one of our office executives supervises the operation of three of the—the balance of the Loop houses.

Q. What territory did the District Manager on south side have?

A. He had the theatres operating on the south side, which are located north as far as 47th street, and south as far as the Tivoli Theatre.

Q. And what were the duties of the District Manager?

A. Well, his duties were to supervise the operation and cooperate with the Manager, and act as a reporting officer to the executive officers. Those duties, of course, were very similar to those of a Manager, without the detail.

Q. Specifically, with reference to the Tivoli Theatre and the Maryland Theatre and the Jackson Park Theatre,

are you familiar with those theatres and their locations, personally?

A. Yes, sir.

Q. State what opportunities you had to observe the Jackson Park Theatre and its surroundings?

A. Well, I have had various opportunities, deliberate visits, and frequently, many times passing the Theatre en route to other places.

1398

Q. That is, to other localities?

A. Other localities.

Q. You are also familiar with the location and the surroundings of the Jeffery and Hamilton Theatres?

A. Reasonably so. I don't—I wouldn't be able to give you any detail as to the kind of merchants there are.

Q. And the Avalon?

A. Yes.

Q. The Grove?

A. Yes.

Q. In the operation of theatres, is there an element entering into the operations sometimes called showmanship?

A. Definitely.

Q. Is that a term that is used in the trade?

A. It is a term that is used in show business.

Q. In the operation of motion pictures, what does that term cover?

A. Showmanship, an exhibitor or anyone in the show business who has that talent and that ability, is recognized as being one who has an ability that is particularly adapted to the exhibition of pictures or entertainment.

1399

It covers his ability to properly present his entertainment, to properly surround it with the showmanlike appointments, advertise his picture in a showmanlike manner, applying showmanship.

There is a great difference between the advertising of a picture in the showman's way as against advertising it in a way that does not indicate the ability of showmanship.

There is a great difference in the presentation of a show and the picture, between a showman and one that is not a showman, and where showmanship is applied as against where it is not applied.

Various comforts and conveniences that are offered in conjunction with the exhibition of pictures or entertain-

ment, are considered to be a very definite part of the showmanship involved in the job of doing exhibition.

Everything from the time the patron buys the ticket, the manner and the approach of the cashier in the front, and the appearance of the theatre, until the patron leaves, everything that happens can be good or bad, and can possess showmanship and indicate the ability or not indicate it.

They are all important; every phase of an operation should have, and does have, if it is at all possible for us to inject it, have showmanship applied.

Q. What has Balaban & Katz done in connection with the development of showmanship in the operation of its theatre or theatres, I should say?

A. Much of the ground work and foundation of the Balaban & Katz operations was laid before I came with the Company.

Balaban & Katz Corporation, the Balaban boys, as we call them, are pioneers in the advancement of theatre construction, theatre design, theatre convenience and comfort. In fact the first theatre, one of the first theatres in the country that had two thousand seats, incorporated some of the conveniences and design that are still being used, originated in the Central Park Theatre.

One of them was the cooling of the air, and the regulation of the humidity and temperature in the auditorium by some other process than the old fashioned fan in the corner; and upholstered seats, seats fastened to the floor, carpets, luxurious carpeting; measures of ventilation that would protect the health of patrons as well; better projection, finer screens, service, civil talk to the patrons.

In the old days the show business was far different from what Balaban & Katz intended it to be in their theatres, and they were successful in developing standards for their employees to follow to make a patron more welcome in the theatre.

Q. With reference to clearance between runs, I wonder if you would take up the different playing positions from the Loop to A, B, C, first week of general release, and indicate what the clearance is under which Balaban & Katz theatres have played in the last several years, between those different runs?

A. Clearance is the lapse of time between the finish of one run and the beginning of the other.

In the case of our first run exhibitions, we take and buy clearance of twenty-one days over the next run, known as A run in our theatres. We have six theatres in that run in Chicago.

The A house, in the A run, takes a clearance of fourteen days over the next run. In other words, after the A house plays the picture, the next run can play the picture within fourteen days, that is, not later than fourteen days; if the A house plays it the second week of its availability, 1402 there are three weeks in which the A house can play the picture; if it plays second week, that clearance is reduced to seven days. If it plays the third week, it is reduced to nothing, there is no clearance.

The next run in our group is B run or B week. We have about ten theatres in that run. The B houses play next after the A houses. They have two weeks, fourteen days, in which to play the picture. They usually play two pictures a week instead of—that is, two changes a week instead of one change.

The A house plays one show all week long, and the B houses play usually two changes. If they play the picture on the front half, as we call it, which starts on Friday, Friday is the beginning of the week, Friday, Saturday, Sunday and Monday, that is four days, they have the remaining of the two weeks period, which is ten days clearance over the next run. If they play the last part of the first week, which would be Tuesday, Wednesday and Thursday, they have seven days clearance over the next run; and in the event they play it in the first half of the second week instead of the first week, play it Friday, Saturday, Sunday and Monday, their clearance is reduced to three days; and if they play it the latter part 1403 of that second week, they have no clearance at all.

And then follows C week. We have, in Chicago, about eleven C houses, playing in the C run.

A "C" house has virtually no clearance excepting the first pictures. The C house can make three changes a week; "A" house one, B houses two, and the C houses usually make three. In our circuit we only make two. I think there is one instance where we make three. We play the C houses very much like the B houses. We open on Sunday and play Sunday, Monday, Tuesday and Wednesday.

Now, the show plays on Sunday, Monday, Tuesday and

Wednesday, has three days clearance over the next run, that is, three days left in the week, Thursday, Friday and Saturday. The next run opens on Sunday.

The pictures that play the C house, in the last half of the week, Thursday, Friday, and Saturday, if that is the way you are operating, have no clearance on the next run just as the B houses, if they use up all their playing time, if they play at the end of their playing time, they sacrifice all their clearance, the same as the A houses.

1404 First week houses usually make three or more changes, and the condition of clearance is a little different, for the reason that the first week house usually plays the picture a shorter length of time than the C house does.

In other words, the first week house would play a show Sunday, Monday, and perhaps Tuesday, perhaps only Sunday and Monday. If they play it Sunday, Monday and Tuesday, they would have four days clearance over the second week house, which follows, which is the next run. If they played the show in the middle of the week, such as Wednesday and Thursday, they would have the remaining two days of the week as clearance over the next run. Then if they played it on Friday and Saturday, they sacrifice their clearance likewise over the next run, and that repeats itself from first week, to second week, to third week, and fourth week, and so on down. There is no change from then on down.

Q. Have you an opinion as to whether or not the clearances that you have mentioned between the different runs are reasonable or unreasonable?

Mr. Korfist: I object, your Honor.

Mr. Adcock: I think that is the very question in-
1405 volved. This witness has had a lot of experience in the operation of theatres, and he is qualified to give an opinion.

The Court: Is that different from the situation if you were to ask him whether the price is reasonable or unreasonable.

Mr. Adcock: Well,—

The Court: The courts have held, haven't they, in these cases that that is not the question involved in this sort of a lawsuit, as to whether the price is reasonable. Now, I was just asking if there is a distinction between this

sort of a question and the question as to whether the prices charged are reasonable.

Mr. Seeley: I think I understand what you mean, your Honor. This is an issue, in these suits. In some of the cases which were mentioned to your Honor, you will find quite an elaborate discussion of the reasonableness of clearance.

The Court: As to whether the arrangement is reasonable.

Mr. Seeley: And as to whether the particular clearances between, or in two houses—

The Court: Then they do distinguish them between
1406 cases which hold as to whether the price charged is reasonable or not.

Mr. O'Brien: Yes. Yes, they do.

Mr. Adcock: I did not understand your Honor's question.

Mr. Korfist: Our point, your Honor, is that that is one of the ultimate facts in this case to be determined by the jury.

The Court: He is an expert. Isn't an expert allowed to give his opinion about what the facts are?

Mr. O'Brien: Distinctly; and we have cases.

The Court: I will overrule the objection. You may answer the question.

The Witness: A. Yes.

Mr. Adcock: Q. What is your opinion?

A. I think the clearances are reasonable and fair.

Q. I show you plaintiffs' Exhibits 8, 9 and 10, which show the records of the operation of the Jackson Park Theatre. You have examined those, have you?

A. Yes, I have.

Q. Did you examine them to ascertain how many changes a week they have in program during the period here involved, in the five years prior to July 28th, 1942?

A. Yes.

1407 Q. Do you remember how many changes a week in program are shown by those books?

A. My recollection, there are an average of about three and one-half programs a week.

Q. How many pictures a week were used or played during this period that I have mentioned?

A. An average of about seven.

Q. How many changes in program per week do you have at the Maryland?

A. Usually two.

Q. As between the Loop houses and the C houses, what is the variation in film rental per picture, approximately?

A. Between the Loop houses and C houses?

Q. Yes. And down further, down to first week of general release?

A. Well, the other day I tried to get an average of the film rental the Chicago Theatre paid per picture, and I assume that is what you mean?

Q. Yes.

A. And I think in 1942 the Chicago Theatre paid an average film rental of about $10,000 per picture.

The Tivoli Theatre, during that some period, showed an average price of about $1600.

1408 The Tower Theatre, if my memory serves me right, was about $350 or '55, '60 dollars; and the Maryland was around $165.

At that same time I tried to arrive at the average price that the Jackson Park was paying, from the records here that were given to me, and it seemed like about $71 a picture, in fact it was $71 and a fraction, per picture.

Q. That is, you took the gross?

A. Film rentals in gross.

Q. Film rental?

A. That is right; against the number of pictures.

Q. Yes, against the number of pictures that the Jackson Park played. The Jackson Park, however, played more, some more pictures than the Maryland played, did it not, per week?

A. Yes.

Q. And what was the relationship in that respect, if you remember?

A. I think we found that the Jackson Park Theatre used seven pictures a week. That would be about 350, about 350 pictures in a year; and the Maryland used about 100 less, about 250 pictures as against 350.

1409 I did not count them for the whole year, but I took a couple of months and averaged it out that way.

Q. From this, it appears, does it not, that in the early runs, beginning with the Loop, they pay more per picture?

A. Oh, yes.

Q. And so on down, and each one a little bit less, and sometimes considerably less?

A. Yes, sir.

Q. Why do you pay more in the early runs and less in each of the successive runs?

A. Well, it is a matter of negotiation to begin with, and the reason that you can pay more in the first run is because the theatre that runs the picture to begin with is located so that it could draw from a large area, in a central location, such as our Chicago Theatre, the State-Lake, the Roosevelt, in the center of the Loop of Chicago. They are accessible to all forms of transportation, trains, cars, elevated, buses, private cars and walking, if you choose, and the ability to draw to this Theatre of this size affords an opportunity for a substantial gross, therefore, an opportunity to pay a substantial film rental, 1410 which would be much higher than the film rental some other theatre could pay that was in a different district, for instance.

Q. Take the Tivoli and the Tower and the Maryland, the same reasons that you have mentioned apply to those, to the film rentals that you have described, that is, the Tivoli, larger than the Tower —

A. Your Tivoli Theatre, the Tivoli Theatre is now and was one of the largest theatres in the country, one of the finest. It has a unique location. It is at the corner of 63rd and Cottage Grove, not right at the corner, but a few stores from the corner, accessible by street car, Elevated, automobile, railroad, and walking; and serves a—can serve a large area on the south side of Chicago.

It entertains people who come many miles to come to the Tivoli Theatre. The Tivoli Theatre, they come far to see pictures at the Tivoli because of the location, as I have told you, and the unusual presentation.

It is a beautiful theatre. It is a pleasure to see the Theatre. It is a pleasure to see a picture in the Theatre. The sound is scientifically perfect. The projection is 1411 scientifically perfect. The comforts and conveniences given to the patron that comes a long distance to visit the Theatre are there for them, very much as they are in the Chicago Theatre in the Loop, excepting that it is not located in the center of the city; it is on the south side of Chicago.

Then your Tower Theatre is a theatre with 3,000 seats, likewise located in the center of this Woodlawn district, very fertile and active business section of the south side, offers very much the same conveniences that the Tivoli

does, not quite as fine, not quite as elaborate, but very fine. The same men that watch the sound reproduction and projection at the Tivoli watch at the Tower. They have the benefit of the same scientific study and support and maintenance, and it makes an effort to entertain those people, and that is practically the same area, that want to pay less than the Tivoli charges, and the Tower Theatre is a B house, and plays after the Tivoli, or after the Avalon.

Then your Maryland Theatre, likewise, is a very fine Theatre of its size and type. In fact, it is unusual. It has a very attractive, distinctive auditorium. We have always made an effort to maintain its physical beauty, and its comforts. The sound and projection are watched, again, by the men who are responsible for the Chicago Theatre, the Tivoli Theatre, and it makes an effort to entertain people who want to pay a lower admission price than the Tower or Tivoli, or the Loop.

1412

It is located in this same well populated section, busy street, fertile business district, and plays in C week.

Q. Do you know what the admission prices have been at the Tivoli, Tower and Maryland in the last several years?

A. Well, I brought my book with me. I think Mr. Goldberg has it, if you want it.

Q. Take, begin with the year 1937 and go on.

A. Which Theatre would you like first?

Mr. Adcock: Take the Tivoli first.

A. The Tivoli Theatre, in 1937, week days, to 6:30, was charging 30 cents.

Q. I think if you will just give the evening adult admissions, that will be sufficient.

A. Evening adult admission at the Tivoli Theatre, week days, was 55 cents after 6:30; the same price on Saturday, and Sunday all day, Saturday evening and Sunday all day; 1937.

1413

1938, the price was the same.

'39, the price was the same.

'40 and '41, the evening adult price was the same, excepting—no, it is the same.

And '42, it was the same.

'43 it was the same. It is the same now.

Q. The Tower, take the Tower?

A. Tower Theatre, in 1937, charged 44 cents. These

prices include the tax, the federal tax, of 10 per cent. '38, '39,—

Q. Can you give them—you do not need to go back to the Tivoli, can you give them exclusive of the tax?

A. All right. In the case of the Tower, the price was 40 cents.

The Court: A tax of ten per cent all the time?

The Witness: That is right. 4 cents tax.

The Court: So that makes it 40 cents for the Theatre?

The Witness: That is right.

Mr. Adcock: All right. So that I think you can give it, if it is ten per cent.

A. The tax is 10 per cent. In this case the price was 40 cents, plus 4 cents. That is for 1937, '38, '39, '40, '41, '42 and '43. It is the same now. It will change 1414 April 2nd or 1st.

Mr. Adcock: The Maryland Theatre?

A. The Maryland Theatre, 1936, was getting 35 cents; in '37, 35 cents.

Q. That included the tax?

A. There was no tax.

Q. All right.

A. I don't think there was a tax in '37, was there?

Mr. Adcock: I don't know.

A. It doesn't show it here. I don't recall when the tax went into effect.

The Court: That is not material.

A. Yes, it does not matter. When the tax went into effect, in some cases we absorbed the tax. In other cases we added it on, and it is difficult to determine that from looking at these records. They do not show that.

Mr. OBrien: July 1st, 1940, we understand the tax to have gone into effect.

The Witness: That is my recollection, some time in July, 1940.

1415 A. The price was 35 cents in 1936, '37, '38, and in 1939—or in 1940 the price was increased to take care of the tax. In 1941 the price was the same. 35 cents plus tax; in 1941, 35 cents week days including tax. That would be 32 cents plus 3 cents tax, and 40 cents on Saturday or Sunday evening and on Sunday all day. That would be 36 cents plus 4 cents tax.

That is all.

Mr. Adcock: Q. The minimum admission price fixed by

the contract during that period was 30 cents for the Maryland, was it not?

Mr. Korfist: I object to that form of question, your Honor. He could ask the minimum price.

The Court: I think the question is a statement.

Mr. Adcock: Q. Well, what was the minimum price during that period?

The Witness: A. Well, I could not tell you as to all contracts, Mr. Adcock, but I think it was generally about 30 cents.

Q. Have you made a comparison between the Maryland Theatre and the Jackson Park Theatre as to location, transportation, size, and ability to draw patrons?

A. Yes.

1416 Q. Will you state the comparison, how you compared the two theatres in those respects?

A. Well, as to location, the Maryland Theatre location in my opinion is superior, far superior to the Jackson Park, because the Maryland Theatre is in the center of Woodlawn business district. The Jackson Park is on the fringe of it, the Jackson Park Theatre. In fact, it is on the fringe of two business sections, one coming from 71st Street and the other coming from 63rd Street. It is in between. The Maryland's location is definitely superior.

The theatre in size is not much different. I think we have fifty or sixty more seats than the Jackson Park. We have slightly less than 1500. I know the Jackson Park has 1400 and some. There is very little difference there.

But the Maryland Theatre, in appointments and patron comfort and convenience is much superior to the Jackson Park, in my opinion. The Maryland Theatre has the modern weather control, as we call it, air conditioning plant, that the Jackson Park does not have, according to what I have heard here from Mr. Salkin, and the theatre has fine projection. It has a very delightful auditorium, the-

1417 atrically designed by competent architects. The appointments are beautiful,—particularly right now we just finished spending a considerable amount of money in improving of these things, which we do periodically in all our theatres when it becomes necessary, in an effort to keep them up to date and clean. And, going back to location, it is definitely in the middle of things that happen.

People go into districts to buy many things besides entertainment and take advantage of their presence there to

buy all the things they buy. The location brings many people, the business on the street brings many people to 63rd Street and Cottage Grove. That would cover to about 67th and Stony Island, because you have about two blocks of business there. The park starts at 67th Street and goes north from there, Jackson Park, a beautiful park. Then, as you travel south from 67th to 69th you have some business in that block, on that side of the street. That is a very wide street. Then south of 69th you have spotty conditions until you get to 71st Street and within two blocks it starts to build up again as you go to 71st Street, where you have the Illinois Central Stations and things, and
1418 the Jeffery Theatre is located on 71st Street east of Stony Island.

I don't think there is anything further that I can say in answer to your question.

Mr. Adcock: Q. You testified the other day in regard to negotiations for the licensing of pictures or product from various distributors for your theatrees in the Loop and for outlying theatres, and that the negotiations for the product in the Loop was separate from the negotiations for the outlying theatres, as I remember it, or substantially to that effect; is that correct?

A. Yes, sir.

Q. I would like you to describe the negotiations that you have with distributors and have had during several years past, for product for your outlying houses. Take, for instance, the Fox Film Corporation.

A. Well, there has been—

Q. When did the negotiations take place and what is the form of the negotiations?

A. There has been a little change in the process in the last five years, as far as to when is concerned.

Prior to 1940, the negotiations with Fox, for in-
1419 stance, I recall the Fox Film Company's representatives would come to our office, in some cases it would be the sales manager of the company, along with the local representatives, and in some cases usually the local representative, the district manager, for many years Mr. Eckhardt of Fox, until recently he was transferred to California, and we would negotiate in this way.

He was presenting—prior to 1940 this is—he was presenting his entire season's expectancy in the pictures. He knew about how many pictures they were going to make.

he knew approximately how many of these pictures were of high quality and intended to be of high quality, and the stars were cast in the principal pictures and the stories have been selected, and he would give us a presentation of his prospectus, this plan. In some cases he would have some pictures ready. And he would present to us a program of prices and conditions under which he would like to have us exhibit these pictures. These conditions, of course, included the clearance that he was willing to allow us or that it was necessary for him to have over the subsequent run of the picture, because of the nature of
1420 the deal, whether it was flat rental or percentage. If he was involved in the outcome he was vitally interested in protecting that, of course,—but the clearance was usually the same in either case.

The admission price that the picture should be exhibited at by us in the first-run house that we were going to play it in. We would naturally have pro and con arguments as to price and other conditions, and, if you eventually bought the picture, it was because you came to an understanding; if you did not buy the picture it was because you did not come to an understanding. We usually came to an understanding. Some times in cases we did not. There are a very few, because naturally we are anxious to play pictures. That is our business. We always made an effort to get together with a distributor if his demands were at all reasonable.

Mr. Adcock: Q. Was the question of the matter of the runs at particular theatres,—was that discussed?

A. In the first-run case it was only a question of clearance involved. The next run—

Q. You are referring now to what is called the A
1421 runs?

A. Yes. After negotiations had been completed on the first-run group, from twenty-five to forty-five pictures, they would then present to us a plan involving the exhibition of their pictures in the outlying theatres, of which we have a large number and in which they were very desirous of having us play their pictures. They would again explain the value of these pictures, the stories, cast, and so forth, and go through a similar process and present to us a schedule of run, price of picture, cost to us, and admission price under which they would like to have us play these pictures in the various runs.

Then the negotiation would take the same form as it would in the first run. If their proposition was a good one and cheap we would take it quick, and if it was not we would bargain and bid to see if we could not knock down the price of change the clearance or change the admission price they demanded.

After those various negotiations the deal would be consummated or it would not be,—and it usually was with Fox, I don't recall ever having not made a deal with
1422 Fox during my time there. Then after these negotiations were finished the Fox representatives naturally would retire to their offices and, in the course of a week or two or three, they would present to us, in contract form, the result of these negotiations, present them for our signature, and, if we found it to be correct, after checking it, we would sign it. They would take it back, I believe, send it to their home office for approval, and eventually we would receive our copy for the file.

And that is the story of negotiating Fox pictures.

Mr. Adcock: Q. With regard to Metro, sometimes called Loew's, you had a franchise, a so-called franchise during this period, did you not?

A. Yes—five years.

Q. And that you testified to in the examination originally by Mr. McConnell, did you not?

A. Yes, sir.

Q. Then, did the negotiations with Paramount pictures take substantially the same form or was there a difference?

A. Substantially the same form up until 1941 or 1940.

Q. Well, perhaps you had better describe the form
1423 of negotiations, if there was any difference, after 1940, and the occasion for it.

A. Well, after 1940—I did start out to tell about prior to 1940 and I neglected to follow through.

Q. Yes.

A. We will go back to Fox. I think we should, because I did not finish that.

Today Fox does not present pictures in prospectus. That is, they don't tell you maybe they are going to have these pictures and those pictures and "We have got these pictures." Today they show you the pictures you are negotiating for. You actually see them first and after you see them you negotiate for them. The negotiating process from then on is the same: the only difference is you actually see

the picture you are buying before you buy it today. We did not then. And you don't buy such large numbers at one time. You buy four and five—well, from Fox about five pictures, I believe, is the largest group that they have presented at one time.

Now, Paramount was the same way prior to 1940. Today our deal with Paramount is more or less an in-
1424 tercompany deal. We don't negotiate; the pictures are played on their merit on a key basis. In other words, we pay for a picture on our circuit a total amount of money that is arrived at by taking a percentage of the national film rental and applying it to us on what they call a key basis; in other words, flat rental, when we used to buy pictures by contract from Paramount and pay a stipulated sum like we did with Fox. When you finished negotiations your contract for the year, it would total up to the sum of $200,000, $300,000, or $400,000.

Q. How about the matter of runs nad clearances?

A. Runs and clearance are negotiated the same way today as they were prior to 1940 with every company. Each negotiation is separate and apart from the other.

Q. Take the negotiations with RKO and Vitagraph with reference to the outlying theatres.

A. Vitagraph is also known as Warner Bros. in the trade. We used to be able to buy Warner Bros. pictures for all our theatres, but in the last five or six years we cannot get them. They won't sell them to us at the
1425 Tivoli and Southtown; they won't sell them to us at the Iris. But the negotiations are held in practically the same way. The man responsible for the sale of the contract in this territory, or the salesman from New York in conjunction, will come into the office, making an appointment some times in advance of their coming, and state that they are coming for the purpose of selling us their pictures or their licenses,—and the negotiation is practically the same.

Q. RKO, what is the situation there?

A. RKO we used to negotiate for all our theatres with RKO. Used to like to play all our theatres. But they don't now. They took their pictures away from us at the Tower, Tivoli and Southtown, and we don't play one at the Terminal Theatre and the Central Park. Of course we try to get them each year and make demand for them and try to negotiate for them, but are not successful.

Q. That is, for the theatres you mentioned?
A. But we cannot get them.
Q. That is the Tivoli and Southtown?
A. Yes.

Q. Have you nay opinion as to what would have
1426 been the effect upon the gross receipts of the Maryland had the Jackson Park played in C week during the years 1937 to 1942?

Mr. Korfist: Objection, your Honor.
The Court: What is the objection?
Mr. Korfist: Well, I will withdraw it now.
The Witness: Will you read the question?
The Court: Read the question.
(Question read.)
The Witness. A. Yes.
Mr. Adcock: Q. What would have been the effect?
A. I think the effect would be that the receipts at the Maryland Theatre would drop.
Q. Do you know how much they would have dropped?
A. It would be a guess, but it is conceivable to imagine that the—the Jeffery and Maryland are playing in C week; if you put a third picture in there and divided that patronage between three houses instead of two, I don't know how much it would drop, but it will drop.
Mr. Korfist: I move to strike that answer, your Honor. He said it was based on imagination and guess.
The Court: Well,—

Mr. Seeley: It seems to me that I have heard this
1427 before, Judge.

The Court: What he is doing is testifying at the opposite end to what Mr. Salkin has testified. Salkin gave his opinion as to what would happen and now he is asking Mr. Immerman, on the other side, as to what would happen. The motion is overruled.
Mr. Adcock: Will you repeat the question?
The Court: He has answered it.
Mr. Adcock: He has answered it? Yes.
Q. The different contracts that have been offered in evidence here provide for minimum admission prices for various runs where your theatres play, such as the Tivoli, Tower, Maryland and so forth. What is the occasion for your agreeing to a minimum admission price?
A. Well, a very definite reason is that it is part of the negotiations; it is a stipulation in the deal; it is part

of the exhibitor's performance, in that case ourselves, of the contract. The distributor sells us a license to show the picture at a certain time at a certain price to the public, for which we pay a certain price; and gives us a
1428 certain clearance, all of which are involved.

Q. Is that a requirement of the distributor who sells the picture?

A. Yes, sir, a very important part of the contract.

Q. During the periods from July 28, 1937, to July 28, 1942, if the Jackson Park had operated in C week would its admissions have been the same as the gross admissions of the Maryland in that theatre?

A. That would be a real guess. I could not tell you anything about that.

Q. Why?

The Court: How is that material as to why it is a guess?

Mr. Adcock: Well, he said he could not tell.

The Court: Well, he said it would be a mere guess. Why is it material as to why it is a guess?

Mr. Adcock: Q. Do you mean by your answer that there is no means of making any calculation or determination of what the results would be?

Mr. Korfist: I object to that.

The Court: The objection is sustained.

Mr. Adcock: Q. I show you Plaintiffs' Exhibit 47, which purports to give the gross admissions of the
1429 Jackson Park and Maryland for the period from 1937, July, to July, 1942, and ask you to look at that.

(Witness examines document.)

Have you an opinion as to whether the gross admissions during the period that I have just mentioned, of Jackson Park, would have been larger than they actually were as shown by Plaintiffs' Exhibit 47 had it played in C week during that period?

A. I haven't any basis of forming an opinion as to what would happen there.

Q. You have no opinion?

A. No, as far as Jackson Park is concerned.

Q. What was the effect of Bank Night on gross admissions of theatres, do you remember?

A. Bank Night is a game of chance.

The Court: The question was what effect did it have on admissions.

Mr. Korfist: I object.

The Witness: The effect on admissions was that it increased them substantially.

Mr. Adcock: Q. And did Balaban & Katz have theatres that used Bank Night?

1430 A. Yes, sir.

Q. And that was true of their theatres?

A. Yes, sir.

Q. What are the number of employees that you have at the Maryland Theatre and have had during the period that is involved here, and the classes, classifications of such employees, outside of the manager?

A. Without the manager?

Q. Yes, outside of the manager.

A. Well, classifications, we have motion picture operators, cashiers, engineers, electricians, janitors, ushers, maids, plus the manager and an assistant manager. I would say about twenty people.

Q. Do you recall the number in each classification?

A. We have two operators, projectionists, two cashiers, we have one engineer—there are two men, really, two engineers—and an electrician, one, a manager and an assistant manager, one maid. There is a third cashier who relieves and operates and takes care of the other detail work for the manager. And the balance would be ushers.

Q. Has there ever been to your knowledge any agreement, conspiracy, understanding, negotiation or

1431 communication between any one of the defendants and any other defendant to maintain in the city of Chicago and its environs, a system of releasing motion picture film for exhibition in theatres owned, leased or operated by any of the defendants or by their subsidiaries or affiliates, or any theatres owned, leased or operated by any other firm, person or corporation?

Mr. Korfist: I object to that, your Honor, isn't that one of the ultimate questions to be proved here and to be decided by the jury?

The Court: I think he is allowed to answer that question.

The Witness: A. I know of none.

Mr. Adcock: Q. Has there ever been to your knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the defendants and any other defendant whereby in the releasing of motion picture films for exhibition in the city of Chicago and its

environs, theatres owned, leased or operated by any of the defendants or by their subsidiaries or affiliates are given or were to be given preference and priority or
1432 prior runs and clearance in the exhibition of motion pictures over independent or other theatres?

A. I do not.

Mr. Korfist: Same objection.

The Court: The same ruling.

Mr. O'Brien: What was the answer?

The Witness: I do not.

Mr. Adcock: Q. Has there ever been to your knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the defendants and any other defendant to introduce double features in theatres owned or operated by any of the defendants, or to force or otherwise compel the plaintiffs to buy double features from the distributor defendants or any of them or to force the plaintiffs to buy motion pictures under a system of block booking or to contract in advance for a number of motion pictures sight unseen, or to buy shorts, newsreels or serials not desired by the plaintiffs—I think I will eliminate the—read the question.

The Court: Oh, we don't have to have the question read. Are you going to object to it?

Mr. Korfist: I am going to object.

1433 The Court: I am going to sustain the objection. We have gone far enough with this kind of question. You asked him twice whether he is guilty or not of the charge in this complaint. He said he is not. You ask in that question a lot of things that are not in this case at all.

Mr. Adcock: Well, I think that is true in that question.

The Court: The objection will be sustained.

Mr. Adcock: In that question.

I think that is all, your Honor.

The Court: Take a recess for ten minutes.

The cross-examination, then, is going to be postponed?

Mr. Korfist: Will be reserved, your Honor, yes.

The Court: And you have another witness?

Mr. O'Brien: That is not true as to any question which we may choose to ask.

The Court: On what?

Mr. O'Brien: On the examination of the witness.

The Court: Are you going to examine him in chief now?

Mr. O'Brien: Not in chief, no.

The Court: Cross-examination?

Mr. O'Brien: I may have some.

1434 (Whereupon a recess was taken.)

The Court: I guess they want to ask you some more questions, Mr. Immerman,—Mr. O'Brien or Mr. Seeley want to ask you some questions.

Cross-Examination by Mr. O'Brien.

Q. Mr. Immerman, you testified that during the Bank Night period, the admissions at the Maryland were increased, is that right?

A. Yes.

Q. Were they increased substantially?

A. Yes.

Q. And was that true at the other houses which you operate, during the Bank Night period?

A. It was true of all theatres that were playing Bank Nights.

Q. And when Bank Night ceased, what, if anything, happened to the admissions at the Maryland?

A. They went down.

Q. Were they down substantially?

A. Very substantially.

Q. And was that true also, of the other houses which had been running Bank Night?

A. Yes.

Q. I am speaking, of course, of Balaban & Katz

1435 houses?

A. Those are the only ones I know about.

Q. I believe that you were present in Court during the time that the testimony up to this point was given in this case, were you not?

A. Yes, sir.

Q. And in giving your opinion as to the reasonableness of the clearance to which you testified, did you predicate that upon the facts which you heard in this record, as well as on your own knowledge?

A. I said the clearance was reasonable, as to my own knowledge and opinion.

Q. I see. You said that Warner and RKO product does not play at the Tivoli and Southtown. Do you know what houses it is played on the South Side?

A. Yes. We play it in our theatres other than the

Tivoli, and the first run on the South Side is played in the Avalon and Capitol Theatres.

Q. In Warner theatres?

A. Operated by Warner Bros.

Mr. O'Brien: Excuse me a moment, your Honor. I may have one more question.

That is all.

1436 *Cross-Examination by Mr. Seeley.*

Q. Mr. Immerman, your downtown Loop houses generally play on a single feature policy, don't they?

A. Yes.

Q. Have you an opinion as to whether double featuring in subsequent-run houses has an effect that is beneficial or detrimental to first run houses playing single feature policies?

A. First run business is very good. Single featuring,—I don't think it has any effect.

Q. Did you, in 1936, introduce double features in your subsequent-run houses for the purpose of protecting or building up your business in the Loop?

A. There was no connection in the thinking—

Q. That was solely something that had to do with the successful operation of subsequent-run houses, is that correct?

A. That is right, yes.

Mr. Seeley: That is all.

The Court: Cross-examination will be postponed until Mr. McConnell returns. You may step down.

(Witness temporarily excused.)

1437 Mr. Seeley: Mr. Adcock has kindly permitted me to interrupt his presentation. This witness has to get back to the West Coast and has his reservation.

1438 CLYDE W. ECKHARDT, a witness produced on behalf of Twentieth Century-Fox Film Corporation, a defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. Will you state your name, please?

A. Clyde W. Eckhardt.

Q. Where do you live, Mr. Eckhardt?

A. I live in Beverly Hills, California.
Q. By whom are you employed?
A. Twentieth Century-Fox Film Corporation.
Q. In what capacity?
A. Branch manager.
Q. Of what branch?
A. Los Angeles branches and the area which it serves.
Q. How long have you been employed in that capacity?
A. Since the 24th of last May, in Los Angeles.
Q. Prior to that, for how long have you been employed by Twentieth Century-Fox Film Corporation?
A. It will be twenty-nine years this September.
Q. What was then the first year in which you went to work for that company?
A. September 13, 1915.
Q. What was the first position you held?
1439 A. Manager of the Pittsburgh office, Twentieth Century-Fox Film Corporation.
Q. And the next one?
A. The next one,—I went to New York in 1917, in charge of the sale of certain brands of our pictures throughout the United States for a period of several months. I came out here to Chicago in 1917, and supervised the conduct of business here until 1922, when I returned to New York, stayed there four years in the capacity of assistant to general manager, and supervised under his direction world-wide sales and distribution of Fox Films; returning here February, 1926, since which time I remained here until last May.
Q. And during that period, in what capacity were you serving?
A. District manager, branch manager.
Q. Does your company have an office or exchange here in Chicago?
A. Yes.
Q. What territory does that office serve?
A. It served Illinois to the Wisconsin line, served a few counties over in Indiana, and as far south inside of Illinois to Lincoln, and then over through Macomb,
1440 and that territory; the greater part of Illinois except the river towns.
Q. Will you tell the jury what a film exchange is,—what goes on?
A. A film exchange, in the first place, is located at a

strategic point to serve a territory that permits the quickest travel to and back; and that office consists of branch manager, salesmen, bookers, bookkeepers, clerks, shipping clerks, poster department, inspectresses, and sales.

Q. What does the sales staff do?

A. The sales staff, under the direction and supervision of the branch manager, solicits all theatres for contracting and sale of the product that the company distributes.

Q. What do these bookers do, that you mentioned?

A. Upon the completion and recording of a sale, they set it up in what is called the booking book, and which observes clearance, likewise routing of all films to those accounts which are sold either inside or out of the city; and from the bookers, the record goes to the bookkeeping department, who in turn do their billing, and so forth.

Q. What is the inspection department?

1441 A The inspection department inspects films as they return from each engagement, and prepare them for vaulting and ready for shipment when called upon.

Q. About how many motion pictures in Chicago does your Chicago exchange serve?

A. Do you mean in the city, or do you mean all combined in the area that is served?

Q. Well, both.

A. In the area we have approximately 560 possibilities.

Q. And in the city of Chicago, about how many?

A. I would say, in the city of Chicago, in the neighborhood of 275.

Q. Does the Chicago exchange have a certain number of prints of each feature picture allotted to it?

A. Well, it may have changed since I have been here, by one or two, either way; but usually you have a permanent allotment from eight to twelve prints on each subject.

Q. Well, when the film is playing downtown in the Loop in first run, how many of those prints do you need?

A. We usually supply two, one for the exhibitor
1442 and the other for an emergency print in the event of fire or destruction of the film.

Q. During that time, what is done with the rest of the allotted prints?

A. The rest of the prints are booked out to a territory that is not controlled by any Chicago clearance, to get those out of the way, so that when it comes to Chicago, we have those prints in service.

Q. In the runs here in Chicago, called C week, first run, how many theatres will be playing the same picture?

A. In C week, up to a few months ago, it was slightly in excess of fifty, possibly fifty-two.

Q. What do you do for prints for serving those theatres?

A. Anticipating and knowing our bookings, and the position that the prints are played in, we then contact our print department in New York City, who in turn contact many of our other branches throughout the United States. They block off their booking and the prints in order to supply them here, during the period when the prints are mostly required in great numbers.

Q. In other words, they lend the prints to other
1443 territories that are short of them?

A. Yes, sir.

Q. When you came in the business here in Chicago, here in 1917, how did the type of feature pictures that was then in general use, compare as to quality and as to cost with the types that are in general use today?

A. In that particular period, they could in no way compare with the standard that has been built up in the meantime, and the cost was very inconsequential, then for production against that of today.

In other words, you made pictures of feature length then, you made them with several exceptions from $15,000 up to $40,000 or $50,000, whereas today and as developed in the last few years, and particularly at this time, your pictures cost from $40,000 to $2,500,000 each.

Q. How did the motion picture theatres in the Chicago Loop district compare in 1917 with the theatres that they have there today?

A. With the exception of the Orpheum Theatre in that particular period, I am certain there was no house that seated, that is, motion picture theatre, that seated over 300 people in those theatres.

1444 Q. What kind of admission prices did the Loop theatres get in those days?

A. Five cents and ten cents.

Q. How about the outlying or neighborhood theatres in Chicago; generally speaking, how did they compare in size, appointments, admission prices, with the theatres that we have today in Chicago?

A. Frankly, hardly comparable. And the admission

price likewise, was the same as downtown. On occasions you might increase a picture to fifteen cents admission. In my memory the first definite increased admission house was the Central Park on West 12th Street, and they charged twenty-five cents, which was reaching high at that period.

Q. Has your company been known as the Twentieth Century-Fox Film Corporation during the whole time you have been with it?

A. No, sir.

Q. What was the first?

A. Fox Film—in the original day prior to 1915, it was called Box Office Attraction. In 1915, in August or September of that year, it became Fox Film Corporation, and I believe—I haven't got the date set in my mind, but around 1932 it became the Twentieth Century-Fox Film Corporation.

1445

Q. At that time did it merge with another producer known as Twentieth Century Pictures?

A. Yes, it merged with Twentieth Century Pictures.

Q. Going back to the period, say, from 1917 up until 1927 or so, what was the standing of the Fox Film Company in the industry with respect to the quality of pictures which it put out, compared with the best that were on the market?

A. Well, Fox Film Corporation in that day did not make the high standard of pictures that they do today. They were Westerns, highly melodramatic subjects.

Q. And how did they compare with what some of the other companies were making at the same time?

A. Well, I don't think they ranked quite up with one or two companies at that time, but they made a lot of money though.

Q. Did you know the Jackson Park Theatre in 1917?

A. Yes, sir.

Q. And were you, in a general way, familiar with the territory on the South Side in which it is located?

1446

A. Yes, sir.

Q. At that time how did the Jackson Park Theatre compare in its size and appointments with the other theatres in that territory?

A. In the immediate vicinity the Jackson Park stood out above what was in existence at that time.

Q. Can you remember the names of any of the competing theatres that were in that territory?

A. Oh, the Hamilton, the Lexington, the Drexel, the Langley, the Lux; that is about all I can recall in that immediate vicinity, although there may have been more.

Q. Has Fox licensed its pictures to show in the Jackson Park Theatre from 1917 right up until the time you left Chicago in 1943?

A. Most consistently so.

Q. Did you negotiate any of those deals yourself?

A. Well, in the very early days I may have but in a past number of years the negotiation was carried on
1447 by a salesman under my supervision and direction.

Q. Did they report to you in the process of the negotiation?

A. In every single instance.

Q. Was the deal always seen and approved by you before it went into effect?

A. Yes, sir.

Q. Who has been the salesman in recent years who has handled that account?

A. Harold Loeb.

Q. Is he still with the company?

A. Yes, sir.

Q. Did you know Mr. Leo Salkin when he was the manager of the Jackson Park?

A. I did, sir.

Q. As nearly as you can remember, about when was that?

A. When he left the Jackson Park?

Q. Yes; when he was there.

A. Well, I can't tag it right down, but I think he left there possibly around '22 or '23.

Q. Did you, after him, know Mr. Dave Rice?

A. I did, sir.

Q. About how long was he there?

1448 A. I would say, to the best of my recollection, four or five years.

Q. And have you know Mr. Richard Salkin while he has been the manager?

A. I have.

Q. Did you know Mr. Edward I. Bloom, the former owner of the theatre?

A. No, sir.

Q. Do you know any of the plaintiffs, the present owners of the theatre?

A. What is that?

Q. Do you know any of the plaintiffs who own the theatre now?

A. Only by sight, since I have been in the court room.

Q. Throughout those years that your company has negotiated film deals and done business with the Jackson Park Theatre, have you had occasions to talk with the different managers of that theatre?

A. Oh, I have talked to them; yes, sir.

Q. What would be the occasions for your talking to them?

A. Well, on occasions if my salesman was unable to impress them with the value of the film and the
1449 price that was being discussed, then I might put a little pressure myself in to get that price.

Q. Now, from 1917 up to 1919 or '20, in what playing position did Fox license the Jackson Park Theatre, compared with other theatres in the same neighborhood?

A. The Jackson Park played first run in that neighborhood until shortly after the then called Woodlawn was built, after which the Jackson Park followed immediately after the Woodlawn.

Q. Was there any kind of clearance in those days?

A. No, excepting that there were preferred accounts that did play and immediately following that account other theatres would fall in.

Q. Did any of the theatres that played the picture first have protection over subsequent run houses?

A. They had a preferred run ahead of them, not necessarily any days intervening at the termination of the play date in the particular theatre that had that preference.

Q. Did all the theatres use and charge about the same admission prices at that time?

A. To the best of my knowledge they did; yes, sir.
1450 Q. Now, when the Woodlawn opened,—that is the present Maryland Theatre you are speaking of, isn't it?

A. Yes, sir.

Q. Did you license that theatre to play Fox pictures?

A. Shortly after it was opened; not immediately upon its opening.

Q. And when you licensed them, you say you licensed them to play ahead of the Jackson Park?

A. Yes, sir.

Q. Who was the owner of the old Woodlawn, the Maryland?

A. Andrew Karzas was the name I always had.

Q. Has Fox continued from that day up until the time you left Chicago last year, to license its pictures to play at the Maryland or Woodlawn ahead of the Jackson Park?

A. Yes, sir, all excepting one picture that I can recall.

Q. Prior to 1927, did Mr. Leo Salkin or Mr. Dave Rice, or any one else on behalf of the Jackson Park Theatre ever complain or object to you about your licensing
1451 the Maryland or Woodlawn to play ahead of the Jackson Park?

A. Not to the best of my recollection; no.

Q. Or to any one else in your company, so far as you can recall?

A. Not in so far as I know.

Q. Now, when was the Jeffery Theatre built out there, as you recall it?

A. 1925.

Q. Did you begin licensing Fox films to show in that theatre after it was opened?

A. Yes, sir.

Q. With reference to the playing position of the Jackson Park, in what playing position did you license the Jeffery Theatre?

A. In 1925, I was still in New York, but to the best of my knowledge, the Jeffery played ahead of the Jackson Park.

Q. You came back in Chicago in 1926, you said?

A. 1926.

A. And the Jeffery was playing ahead of the Jackson Park then?

A. Yes.

Q. And since that time have Fox pictures been consistently licensed to play in the Jeffery ahead of
1452 the Jackson Park?

A. Yes.

Q. Prior to 1927, did Mr. Dave Rice ever complain or object to you about your licensing the Jeffery to play ahead of the Jackson Park?

A. Not to me.

Mr. Korfist: Objection. Our point is that that wouldn't be binding on the plaintiffs, what happened to the different owners of this theatre.

The Court: Well, he said they made no complaint to him.

Mr. Seeley: Q. When was the Tower Theatre opened, as you recall that?

A. The Tower Theatre to the best of my recollection, opened in 1926.

Q. And did you license Fox pictures there?

A. Yes, sir.

Q. Did any one on behalf of the Jackson Park Theatre ever complain to you so far as you can recall, about Fox licensing the theatre to play ahead of the Jackson Park?

A. No, sir.

Q. Where did you license the Tower with respect to the Jeffery and the old Woodlawn, or Maryland?

A. Well, if I recall,—I am a little hazy on it—

1453 but the Tower's playing position to the best of my recollection, was ahead of the Jackson Park definitely and, I believe, the Maryland.

Q. And the Jeffery?

A. And the Jeffery.

Q. When did the Avalon Theatre open, if you recall?

A. I think it was in 1927.

Q. Did you license Fox pictures to play in that theatre then?

A. I did.

Q. In what playing position?

A. First preferred, South Side.

Q. Has any one on behalf of the Jackson Park, to your knowledge, ever complain to Fox about licensing the Avalon in playing ahead of the Jackson Park?

A. Not to me.

Mr. Korfist: Your Honor, I object to that question unless the question is limited to the period subsequent to 1927.

The Court: Do you allege that this conspiracy started before then?

Mr. Korfist: Yes, I believe we do.

The Court: Your complaint goes way back before that time.

1454 Mr. Korfist: Yes, we do; I think you are right.

The Court: That is what I thought. I should imagine that is the theory upon which he is asking these questions.

Mr. Korfist: Yes; I see.

Mr. Seeley: Q. Now, the Tivoli Theatre was opened when?

A. I believe in 1921, to the best of my recollection.

Q. Now, at that time or for several years thereafter, did you license Fox films to play in the Tivoli Theatre?

A. We did not.

Q. Did you try?

A. I certainly did.

Q. Did you during that period license Fox pictures to play in any of the de luxe theatres of Balaban & Katz?

A. No, sir.

Q. And did you try?

A. I surely did.

Q. Out on the North Side of the city, after the Granada and Marbro were opened, the Marbro on the West Side and while they were owned by the Marks Brothers, did you license the first outlying runs of Fox films to show in those theatres?

1455 A. I did.

Q. Up until about '28, how were Fox films exhibited first run in the Loop?

A. We were unable to get any representative first run in the Loop. As a consequence, we negotiated and leased the old Monroe Theatre with a capacity of about 1000 seats, in order to get what we term a show window for our pictures, in order that we could advertise, exploit them, get the benefit of the circulation in the newspapers through the metropolitan Chicago area, and as far as 200 miles away, to place a value on the product, and likewise, that we could establish a release date in the city of Chicago.

Q. About 1928, did any change take place in the quality of films that Fox was producing?

A. It was on and about that time that we materially increased the standard of pictures and with an appeal to the better classes as well as to the masses.

Q. Can you remember some of the important pictures that Fox brought out at that time?

A. At that immediate time I recall very distinctly

1456 "Sunrise", "Street Angel", "Four Sons".

Q. Now, under what circumstances was it that Fox was first successful in licensing any of its pictures to play in the B. & K. downtown houses and in their de luxe A houses?

A. It was at that time, that immediate time due to

the improvement and the raising of the standard of the Fox pictures and box office possibilities, that we were able to negotiate their sale and sell our pictures to Balaban & Katz.

The Court: At what time?

The Witness:-Sir?

The Court: He asked you at what time?

The Witness: At what time? Around 1928.

Mr. Seeley: Q. Now, the first time you sold any of your feature product to Balaban & Katz for their outlying A houses, how many pictures did they buy?

A. On that occasion they bought four in the outlying houses.

Q. How many did they buy downtown at the same time?

A. Fifteen.

Q. Now, on the North Side and West Side and South Side in that season to whom did you license the
1457 first outlying runs of all of your other pictures besides these four?

A. To the Marks Brothers and Avalon and the Capitol.

Q. How many other pictures did you have besides the four?

A. Oh, in the neighborhood of forty-eight or fifty; yes, around forty-eight additional.

Q. In making that first deal with Balaban & Katz, did you have any communication with any other film distributor about it?

A. No, sir.

Q. Or any agreement or understanding with any other film distributor about it?

A. No, sir.

Q. In making that deal did you have any intent or purpose to injure the Marks Brothers and to enable Balaban & Katz to take over the Marks Brothers' theatres?

A. No, sir.

Q. What was your purpose in negotiating that deal with Balaban & Katz?

A. It was to materially and extensively increase our revenue and possible revenue from those pictures
1458 that we sold them and to establish ourselves in that type of house and operation.

Q. And was that your only purpose and intention?

A. Yes, sir.

Q. Now, when and under what circumstances did it

come about after 1927 that Fox films were licensed on the South Side for first run in the Tivoli, instead of in the Avalon and Capitol?

A. Well, in 1928, there were but four pictures licensed to the Tivoli Theatre and the balance of the product that we were able to sell that year was licensed to the Avalon and Capitol.

Q. And then what happened?

A. Well, it developed later on we sold a split of our product to the Avalon, Capitol and the B. & K. Tivoli, and later the Southtown.

Q. And how did that method of selling come to be?

A. That was to the best interests of our company and for the best possible overall increase in revenue as a result of rentals.

Q. Was that your sole purpose in making the change?

A. Yes, sir.

Q. Based upon your own experience and observa-
1459 tion here in Chicago, what was it, during the period from 1917 up until 1927 or 1930, which brought about the development of these various runs such as A pre-release and B pre-release which have been referred to here as the Chicago releasing system?

A. Well, it was a natural progress with the development of the business that came into being just that particular way; it grew up, grew into it.

Q. Do you know of any understanding or agreement between Fox Film Company and any other film company to establish such a system?

A. No, sir.

Q. Now, you said that you negotiated the film deals either personally or through your salesmen here in Chicago. As a part of negotiating those, did you have direct supervision over licensing all of the runs and clearances and admission prices included in those deals?

A. Yes.

Q. Did you receive any instructions or orders, or suggestions from your superiors in the company, with respect to how you should negotiate those runs and clearances in Chicago?

A. No, sir; only to the best advantage for the
1460 sale of our product.

Q. Was it left to you to negotiate the terms of the contracts in that connection?

A. Yes, sir, with they reserving the right for final approval.

Q. That is true of all of your contracts; is it not?

A. Yes, sir.

Q. Now, in negotiating those runs and clearances and admission prices from time to time, did you have any communications with any other distributor here?

A. No, sir.

Q. Do you know of any understanding or agreement or conspiracy between Fox and any other distributor with respect to the runs and clearance and minimum admission prices which should be put into Fox's contracts?

A. No, sir.

The Court: Wouldn't it be well to take our recess at this time?

Mr. Seeley: Yes, we would just as well stop here.

The Court: Until 2:00 o'clock.

1461 (Whereupon the trial of the above entitled case was adjourned to 2:00 o'clock p. m. of the same day, Monday, February 28, 1944.)

1873 IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption—)

Before Igoe, J., and J., Monday, February 28, 1944, 2:00 o'clock P. M.

Court met pursuant to noon recess.

Present:

Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

The Court: All right, Mr. Seeley.
Mr. Seeley: Thank you.

1874 CLYDE D. ECKHARDT, a witness on behalf of the defendant, Twentieth Century-Fox Film Corporation, having been previously sworn, resumed the stand, was examined further and testified as follows:

Direct Examination by Mr. Seeley (Continued)

Q. Mr. Eckhardt, does the practice of licensing motion picture films for exhibition, in accordance with the runs and clearances, prevail anywhere else than here in Chicago?

A. All over the country.

Q. Have you had occasion to observe that in your work for the Fox Film Company?

A. Yes, sir.

Q. What has been your observation and experience as to whether, wherever motion pictures are licensed in that way, the run and clearance which exhibitors get from one producer is generally the same as they get from all the others, just as here in Chicago?

A. Usually so, yes, sir.

Q. While you sold pictures here in Chicago for Fox,

did you ever make an effort to sell those films to exhibitors, according to some set-up of runs different than the
1875 other distributors were selling the pictures?

A. I did, on one occasion.

Q. And when was that?

A. That was, I believe, around, somewhere around 1940, '38, '39, or '40, somewhere in there.

Q. What was your reason for attempting to sell Fox pictures according to some different kind of releasing arrangement?

A. Well, there were several reasons. No. 1, I thought that I might be able to increase my film rentals by extending the clearance over a period of, into periods of two weeks rather than succeeding weeks; it would relieve the tension on the print requirement, and it would permit an exhibitor who was unable to play in the forepart of a week, to play that subject in the latter part of that week, or the following Sunday, and still have a certain clearance and benefit over the succeeding run who would be playing immediately the day following.

Q. And before you attempted to do that, did you have any discussions about it with any other distributor?

A. No; I was alone.

Q. I wish you would tell the jury how you went
1876 about to try to do that, and what happened to your attempt?

A. Well, I first approached Balaban & Katz, to sell them the idea, for the various reasons I have discussed here. I likewise approached the Schoenstadts in the same manner, for their circuit. I likewise had approached Jack Miller, for his, and a few other accounts. But when I began to solicit the city in general, and over all, circuits of a smaller nature, and independent accounts, I found myself up against a stone wall, and had to abandon it and go back, following a practice or a general set-up as was in vogue at that particular time, and which is in existence today.

Q. Now, in selling your pictures according to these runs and clearances that we have been talking about, what has been your principal purpose and effort, towards what has it been directed?

A. I don't quite understand the question.

Q. What were the reasons which you were trying to carry out, in selling Fox films here in Chicago, in the way

that you have sold them; what were you trying to accomplish?

1877 A. Now, you mean?

Q. No. During the entire period that you worked with them?

A. Why, to secure the highest film rentals and revenue for our own Company's prosperity.

Q. In your opinion is there any exhibitor in Chicago which operates theatres in the Chicago Loop which are as desirable for first run presentation of Fox pictures as are the Balaban & Katz Theatres?

A. It has not been in my experience, for our Company.

Q. Why has it been that when you license first run in Chicago Loop, you grant that run as an exclusive run, and grant clearance over subsequent exhibitions of the same pictures?

A. Well, it concentrates advertising, gives it, in my opinion, greater importance, playing in one theatre than it would do in more, and gives an opportunity for an extended engagement rather than a limited one, and for the —again, for the revenue that it involves.

Q. Now, do you know of any exhibitor in Chicago which operates theatres which are as desirable, from the standpoint of size, location, and appointments, for first outlying runs of Fox pictures as are the Tivoli and

1878 Uptown and Marbro Theatres of Balaban & Katz?

A. No, sir: with the possible exception of the Avalon and Capitol.

Q. When you have licensed those A pre-release theatres, what has been your reason in giving them a priority over all other theatres in their respective sections of the City?

A. No. 1, for the revenue, the rental that we could secure was more than we could attempt or expect to get elsewhere.

Q. And were your reasons for granting a certain amount of exclusiveness, and priority, in connection with each other run, the same general nature that you just stated?

A. It was to protect the revenue in that first run house.

Q. Now, why is it that Fox has inserted in all of its license agreemtns some provision as to the minimum admission price which the exhibitor may charge in exhibiting its pictures?

A. We insert minimum admissions, first, to place a proper value on our pictures, and, second, to avoid any unfair competitiveness in a theatre in that vicinity.
1879 We insert the minimum. We are not interested in how much they pay beyond that, but that is the minimum, to protect them against unfair competition.

Q. Do you know of any agreement, combination or understanding between Fox and some one or more other distributors with respect to those minimum admission price clauses?

A. Definitely not.

Q. Are all the pictures which the Fox Film Company distributes each year, of the same quality and value?

A. No, sir.

Q. When you negotiate licenses with your exhibitors, do you negotiate on the basis of one price for all the pictures, or do you negotiate different prices for different pictures?

A. We negotiate different prices for different pictures, dependent upon their box office potentialities, and likewise our cost, and popularity.

Q. And in licensing your pictures, or selling your pictures, whichever way you want to put it, to show in A pre-release houses, which do you find that you can get the largest film rentals for, the best pictures that have already played in the Loop, or the poor pictures that may
1880 not have played in the Loop at all?

A. Always the best ones, from which we receive the greatest revenue down town, are the best in all subsequent runs.

Q. That is, when you negotiate within B runs, do you still find that the pictures that you get the most money for are the ones that had the first play in the Loop and in the A houses?

A. Yes, sir.

Q. And is that true right on down through, right down the line?

A. Right down the line. That is what attracts the exhibitor, in the main, to buy the product, those same type popular pictures.

Q. During all the years that you have licensed both the Maryland Theatre and the Jackson Park, what has been your reason for licensing the Maryland Theatre to play in a run ahead of the Jackson Park Theatre?

A. Well, in my opinion, based upon experience, I felt that the Maryland Theatre was more ideally located with regard to transient business district, and that as a result of that I could get a much more substantial
1881 film rental from the Maryland than I could from Jackson Park.

Q. Have you an opinion as to what the effect would be on the aggregate revenue of Fox if you licensed both of those Theatres to play day and date?

A. In my opinion I believe that it would lessen the value of the picture at the Maryland Theatre, without clearance, and as the result of which they could be insisting upon an adjustment of the contract; that would give us less.

Q. And do the same reasons and considerations obtain with respect to you having licensed the Jeffery, year after year, to play ahead of the Jackson Park?

A. Yes, sir.

Q. During the years that you have dealt with Balaban & Katz, since 1928, what has been your experience as to their willingness or unwillingness to pay film rentals which in your judgment gave the Fox Film Company a fair return on films exhibited at their theatres?

A. Very frankly, I have always found them very liberal.

Q. What has been your experience along those lines with Warner Bros. Circuit Management Corporation?
1882 A. They likewise have been very liberal.

Q. What has been your experience along those lines in negotiation with managers of the Jackson Park Theatre for the exhibition of Fox pictures in that Theatre?

A. Well, in negotiations there was always an apparent attempt to buy for lesser or better terms, than possibly the pictures were offered for.

Mr. Korfist: I move—

The Witness: (Continuing:)—that maintains in other years as well.

Mr. Korfist: I move that the answer be stricken with respect to "apparent", your Honor.

The Court: The "apparent" part will go out.

Mr. Seeley: All right.

Mr. Seeley: Q. Has Mr. Richard Salkin ever said anything to you about wanting a better playing position for the Jackson Park?

A. Not to the best of my recollection.

Q. Has Mr. Mager ever said anything to you about wanting a better playing position for the Jackson Park Theatre?

A. The same answer.

Q. Or anybody else representing the Jackson Park
1883 Theatre?

A. No, sir.

Q. Now, can you recall any occasions at all when you discussed the general subject of runs on the south side, with anybody connected with the Jackson Park Theatre?

A. No, sir.

Q. Why did your Company license the Jackson Park Theatre to play, "How Green Was My Valley" in C week instead of in first week?

A. That was because I was unable to sell the Jeffery or Grove or Coston's theatres on "How Green Was my Valley", and inasmuch as the Jeffery was not playing it, I got away with that, with Balaban & Katz, for that particular one subject to play in C week.

Q. That is, otherwise the Maryland clearance would have prevented it, is that right?

A. That is right.

Q. After that, did you have a conversation with Mr. Mager and Mr. Salkin, in which you stated that you could not sell them any more pictures in C week because you had been called on the carpet for it?

A. No, sir.

Q. Or did you have a conversation which is like that in substance?

1884 A. No, sir.

Q. Has your salesman, Mr. Loeb, ever reported to you that anyone connected with the Jackson Park Theatre had asked him for a better playing position for that Theatre?

A. He did not report it to me.

Q. Did you or anyone connected with your Company, so far as you know, have anything to do with Balaban & Katz going to double features in 1936?

A. Definitely not.

Q. Did you have any communication with any other film distributing company about that?

A. No, sir.

Q. Do you know of any understanding or agreement between Fox and any other distributor about double features in Chicago?

A. I do not.

Q. Did Balaban & Katz consult with you before making their decision to go to double features in their theatres?

A. No, sir.

Q. Do you know of any agreement or understanding between your Company and any other distributor to the effect or purpose that they will negotiate with circuit exhibitors before they will permit independent ex-
1885 hibitors to negotiate?

A. No, sir.

Q. In any of the negotiations which you have had for film licenses here in Chicago, has it been your intention or purpose to discriminate in any way against independent exhibitors?

A. No, sir.

Q. Do you know of any agreement or understanding with anyone else, to discriminate against independent exhibitors?

A. No, sir.

Q. Or did you ever receive any instructions or suggestions from your superiors, that you should, in Chicago, discriminate against independent exhibitors?

A. Not in a single instance.

Mr. Seeley: That is all.

The Court: Any questions, Mr. Adcock?

Mr. Adcock: No.

The Court: Mr. O'Brien?

Mr. O'Brien: No.

The Court: When does this gentleman have to go away?

Mr. Seeley: Wednesday noon, on The Chief.

The Court: Well, defer the cross-examination
1886 until tomorrow, then.

Mr. Seeley: Yes, surely.

The Court: You can put him on ahead of Mr. Hamerman.

Mr. Seeley: Thank you.

The Court: Otherwise he will go beyond the time he has to leave.

The Witness: Thank you.

Mr. Seeley: Thank you.

The Court: You wanted that cross-examination deferred?

Mr. Korfist: Correct, your Honor.

The Court: All right.

1887 JAMES J. DONOHUE, called as a witness on behalf of defendant Paramount Pictures, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Adcock.

Q. Will you state your full name?
A. James J. Donohue.
Q. Residence?
A. Sir?
Q. Residence?
A. Dallas, Texas.
Q. Where do you reside in Dallas, Texas?
A. 3210 Abraham's Road.
Q. How long have you resided there?
A. Since the latter part of July, 1942.
Q. Prior to that time where did you reside?
A. Here in Chicago.
Q. For how long?
A. A period of a little over five years, about five and one-half years, March of 1937 until July of—the end of July, 1942.
Q. And where did you reside in Chicago?
A. I lived at 76th and South Shore Drive for a couple of years, and on Crandon Avenue, between 69th and 70th, for two years, then on 69th street between Crandon 1888 and the street west of Crandon, I forget the name,—
The Court: Paxton.
The Witness: (Continuing:) Paxton, Crandon and Paxton, for a period of a year and a half, just before I left Chicago for Dallas.
Mr. Adcock: Q. And what Company are you employed with?
A. At the present time it is Paramount Film Distributing Corporation. However, that is a wholly owned subsidiary of Paramount Pictures, Inc.
Q. How long have you been employed by Paramount Pictures or a subsidiary?
A. It will be nineteen years this May.
Q. Will you state in a general way what your employment has been the different times, during that period, up to the present time?

A. I started with the Company in May of 1925, in our San Francisco Exchange, as an assistant shipping clerk. I was later placed in charge of that department, and after I had been with the Company for nine or ten months I was transferred to our booking department, worked there for a year or so, and was made Booking Manager, operated in that capacity for a period of time; and in the summer of 1928 was made a salesman out of the San Francisco
1889 branch, worked in that capacity for a period of two years, until June 19th—the latter part of June, in 1930, I was transferred to our Portland, Oregon, branch, in a similar capacity, and a year and a half or almost two years later in May or June of—or April or May of 1932, I was transferred to Salt Lake as Branch Manager, acted in that capacity until January of 1934, when I was transferred to our Minneapolis branch as Branch Manager, and stayed in Minneapolis, in that capacity, until the first of March of 1937, when I was transferred to Chicago, as Branch Manager of the Chicago Exchange.

Q. And what is your present position?

A. I am presently employed as District Manager, with headquarters in Dallas, general supervision over that territory.

We also have a branch in Oklahoma City, and one in Memphis, Tennessee, which are under my supervision.

Q. How long have you been District Manager at Dallas?

A. Since July of 1942.

Q. What territory does that cover?

A. It covers the entire State of Texas, eastern New Mexico all of Oklahoma, all of Arkansas, parts of
1890 western Louisiana, most of Mississippi, parts of Tennesseee, southern Missouri, and parts of Kentucky.

Q. Approximately how many theatres are located in that district?

A. There are about, approximately 1800 theatres playing Paramount pictures in that area.

Q. As District Manager, what are your duties, in a general way?

A. Well, I am the field representative of the home office, and particularly do I supervise the licensing, or as we commonly term it, the sale of our product to the theatres within that territory, assist the Branch Managers wherever and whenever I possibly can, and if any difficulties arise they get in touch with me.

, I visit Oklahoma City and Memphis regularly, and of course make my headquarters in Dallas, and am consulted very frequently by our Dallas Branch Managers.

Q. Approximately how many Exchanges are there in that area?

A. There are three, Dallas, Oklahoma City, and Memphis.

1891 Q. Then you were Branch Manager here at Chicago covering the period from about March, 1937, until August, 1942?

A. That is correct.

Q. Is that correct?

A. Yes.

Q. That was the Chicago Exchange?

A. That is correct.

Q. What territory does the Chicago Exchange cover?

A. We serve the State of Illinois, and of course include the City of Chicago and its suburbs, and down State we go as far south to and including Springfield, as far west as the Mississippi River, as far north as the Wisconsin State line; and then we have several counties in northwest Indiana.

Q. Approximately how many theatres in that area are served?—

A. (Interrupting:) From six—

Q. (Continuing:)—by the Chicago Exchange?

A. Some six hundred.

Q. And in the City of Chicago—

A. (Interrupting:) As I remember—

Q. (Continuing:)—and its immediate environments?

A. As I remember, there was something over three hundred theatres.

1892 Q. How many different exchanges of the character that you have mentioned, if they are the same character, are there in the United States, operated by Paramount?

A. Thirty-one.

Q. As Branch Manager, will you state what your duties were, what your work was, while you were here as Branch Manager at Chicago?

A. Well, I was in immediate and direct charge, and had the direct responsibility of seeing that our business was properly conducted.

Of course, I was assisted in that by a staff of—with the

staff of employees, but my primary concern was connected with the licensing or sale of our pictures, and the booking, or liquidation, as we termed it, of our contracts, after they had been sold. To accomplish that purpose, we had a sales force of, when I came to Chicago, I believe we had three salesmen in the City of Chicago, and two in the country, plus a sales manager.

We had the entire territory and every theatre in it divided into zones, as we termed it, and each salesman was charged with the responsibility of selling our pictures to the accounts within his immediate zone.

1893 After the license agreements, or the sales, had been concluded and negotiated, the next important step in the operation of the Exchange was to see that those contracts were performed, that the pictures were played by the Exhibitors after they had purchased them; and to do that job we have what we call a booking department, which consists of a booking manager, with four or five assistants, plus clerks and stenographers, and there are a lot of problems in that department, particularly because of the fact that we are limited as to the number of prints we receive on any given picture; and in order to serve those accounts with some nine to thirteen prints, and to route those and to keep everybody reasonably happy, it involves a lot of work and a lot of technical knowledge, plus the further fact that all records of any importance in the operation of the Exchange emanated and came from the booking department. Outside of the sales, it is the most important department in the Exchange.

Then we had our Accounting Department, where, of course, we had separate accounts, recording payments, and so on, for each theatre with whom we did business.

1894 Ten or twelve people in that department.

We had a contract department that prepared all data with respect to previous records of negotiation and sales, what the result had been, and the revenue secured from the particular account. And those contracts, after they had been prepared, went, in most cases, to our Sales Manager, who checked the details, and then they came over my desk for signature or further recommendation, if necessary, and in turn were transferred, submitted to our District Office, and finally from there submitted to the home office for final approval.

And then we maintain a staff of some eighteen or twent

inspectresses, whose duty it is to see that prints are kept in proper condition, so that when they are sent to our account, the exhibitor will have no difficulty in running the prints through the projection machine, and they are always inspected before they are shipped, and inspected upon their return. We had five or six people that did nothing but handle the film, vault them and unracked them, when it was necessary to ship according to instructions that they would receive from the front office.

All told,—and then we had janitors, telephone oper-
1895 ators—all told, the operation was between—took from sixty to sixty-five people, in addition to myself.

Q. What was the payroll per week, approximately?

A. Exclusive of my salary and the salary of the District Manager, and of our publicity representative, and of the two or three men on our news staff, all of which were paid by the home office, our payroll was in excess, at that time, of $2,000 a week.

Q. How did those duties, and the work of the Chicago Exchange compare with the Seattle, I believe—no,—

The Witness: Salt Lake—

Mr. Adcock: (Continuing:)—Salt Lake City and Minneapolis Exchange work that you did there—

A. Well, Minneapolis—

Q. (Continuing:)—just in a general way?

A. Well, Minneapolis is a relatively important territory. It is not nearly as important or as involved or intricate as the operation here in Chicago.

Of course, Salt Lake is a much smaller territory, smaller theatres, limited population, and much simpler to transact, and to conduct your business in Salt Lake than it was in Chicago. In fact, I would say that the combination
1896 of Minneapolis and Salt Lake was less rigorous, from my standpoint, than was operating here in Chicago.

Q. Does Paramount produce pictures?

A. They do.

Q. There is sometimes used in the industry, I believe, "negative cost". What does that cover?

A. That is the cost of actual production of the picture, without any charge being made for print costs, or for national advertising, or for the general cost of distribution; that is, the cost of operating our various branches.

Q. Do you know what the cost of production of pictures has been by Paramount during this period that you mentioned?

A. That is, up to and including the present time?

Q. Yes.

A. Well, our production costs at the present time run from $200,000, for a socalled program picture, up to $4,000,000, that is, the negative cost is a little something under $4,000,000 for a picture such as "For Whom the Bell Tolls".

Q. What is the average cost of pictures you produced say between the years, or five years prior to July 28th, 1942?

1897 A. On the average, between five and six hundred thousand dollars. It would vary from possibly $175,000, $150,000 to $175,000 or $200,000 for a program picture, up to $2,000,000 or possibly a little more, for a picture such as "Northwest Mounted Police".

Q. And are you familiar with the distribution of the pictures that are produced by Paramount?

A. I am.

Q. Will you describe how that takes place?

A. Well, once a picture has been produced and recorded on a negative, we strike off what we term positive prints. Those prints, the cost of those prints are the highest single factor in the cost of distribution.

Prints cost between, depending upon the length of the subject, and whether or not it is produced in black and white or technicolor, prints range from $150 to $300 in black and white, and from six or six-fifty to eight-fifty, or nine hundred dollars in technicolor.

We have found from experience, or we know, that about 75 per cent of our customers nationally can not afford to pay and do not pay only a fraction of the cost of a print.

1898 We have many accounts that buy film for as little as ten, twelve and a half, fifteen or twenty dollars, which represents only a fraction of the print cost alone. So it is obviously impossible for us to make—we have found, through experience over a period of years that economically it is sound for us to make up between two hundred and three hundred prints on any given picture, two hundred on the smaller pictures, and up to three hundred on an outstanding box office attraction, or that which we hope will be an outstanding box office attraction.

Q. About how many theatres throughout the United States does Paramount license the same picture for distribution?

A. Well, that again varies, depending upon the box office quality of the release, or of the finished product on an outstanding attraction. For instance, on "Northwest Mounted Police" we will secure something in excess of 13,000 runs, and on a small program picture we make as few as three, four or five thousand runs.

Q. In the motion picture business, and the releasing of pictures, is there any date known as the national release date of the picture?

A. Now, that term is pretty general; but prior 1899 to 1942, we did have what is known as the national release date. As it is today, we do have a date before which, in any given territory, a picture cannot be released, but the release—our concept of the release has changed more to a territorial basis rather than on a national basis.

Q. When a picture is released, nationally, where is it played, usually?

A. It is obviously to our best interests to see that the picture is played in first run, and that is usually, as is the case in Chicago, to get that picture booked in a representative Loop house, as close to national release date as we possibly can secure the booking.

Q. In what parts, generally speaking, in the United States, is a picture played initially, what type of theatres?

A. A picture is usually played in the best theatre available for the picture in the particular Exchange center, because we want the picture shown at the highest possible admission price first, because your first run is usually, and is here, your most important source of revenue. Secondly, the picture is shown to secure the revenue that you want, ofttimes on a percentage basis; it is essen- 1900 tial that the picture be played at reasonably high admission prices, that it be advertised extensively, because it creates a desire on the part of the public to later on see that picture in subsequent runs, or even in areas outside of Chicago itself, using Chicago as an example.

In other words, it is our show window, and our most important source of revenue.

Q. Why can't a picture be played in all of the theatres throughout the United States, or in a given territory, at one time, without regard to the size of the theatre or location?

A. Well, there are two reasons for that, as I have explained.

Your print costs are a very important factor. We are necessarily limited as to the number of prints that we can profitably make, and if that condition should prevail, it would be necessary for all customers to increase their license fees, and therefore to increase their admissions, and it would mean that theatres now running or catering to that portion of the public that can only pay fifteen, twenty or twenty-five cents, they could not exist, they could not afford, they probably could not charge higher ad-
1901 missions, so they would get out of the business; but irrespective of that, it just would be silly merchandising. You would clear a picture at one time, and that portion of the public which did not have the price, or the opportunity to see the picture after that given time would never again have a chance to see it. It just would be silly business, and unsound.

Q. The cost of the positive prints to serve that many pictures would be prohibitive, would it?

A. If we made—if we had, for instance, say the average cost of a print on a given picture was $200, and you made 13,000 prints, the cost would be $2,600,000, which, added to the negative cost of say a million, would be $3,600,000, and motion pictures just do not gross that much for the producer or the distributor. It just is not in the cards.

Q. What was your primary work in operating the Chicago Exchange?

A. To secure for our Company the maximum possible revenue available in this territory for our product.

Q. That is, in the entire Exchange area?

A. That is correct.

Q. How did you go about in carrying out that purpose?

1902 A. By soliciting your various customers, by licensing pictures in an area in Chicago itself, in successive runs, by attempting, first of all, to secure an outlet for your pictures first run, and to have every other desirable outlet in the order of its importance in the territory as a whole, and in Chicago, as it exists, representing the whole competitive area.

Q. And in the City of Chicago, what was your primary or first outlet?

A. Chicago Loop.

Q. That is, the first run Loop theatres?

A. That is correct.

Q. And at the time the pictures were played first run in the Loop, were they played any place else in the Exchange area, the Chicago Exchange area?

A. They were played nowhere else, no place else in the City of Chicago or its immediate suburbs, but we did release a picture in towns like Peoria, Danville, Decatur, Champaign, Springfield, South Bend and others.

Q. What effect did the successful engagement in Loop runs have upon the sale of the pictures later, or the operation, the return of pictures later?

A. It had a very beneficial effect. It made our 1903 sales problem of negotiating with different exhibitors, that much more simple. They knew that a picture was a successful box office attraction, and they in turn realized that their public was aware of that fact, which made our negotiations that much easier.

Q. In Chicago did you license your Paramount pictures for exhibition in what is called successive runs

A. We did.

Q. Would you describe in a general way those different runs?

A. After a picture had completed its engagement in the Loop, there was a lapse of three weeks time. It was then exhibited in the A houses, in the Loop, and your admission price—your evening adult admission price at that time, I believe, was 75 cents, and in some cases it may have been 85 cents.

Then three weeks later it played in the A houses, that is, houses playing in A pre-release, where your evening adult admission price was 55 cents.

Two weeks later the picture was played by the B week houses, with an evening adult admission price of 40 cents. And then generally there was a week's clearance intervening, if they played within the first week of B, 1904 it went to your C week houses, where the evening admission price was 30 cents; the first week houses immediately followed the C week houses, no lapse of time, except possibly a few days; if the C week houses happened to play or did play in the first part of the week, the first week house charged 25 cents, the second week house charged 20 cents, and so on down the line.

Q. How did the license fees, for the different runs, compare, which you speak of?

A. Well, your most important license fee was obtained first run, and then relatively down the line, the way the picture was played. The next important money was secured out of your A houses, then your B, and so on down the line.

Q. Did the practice of licensing in successive runs, with clearance between different runs, prevail in any place else in the United States besides Chicago, that you know of?

A. Every place with which I am acquainted, that is the general practice. I believe that is true nationally, everywhere.

Q. That is true with respect to the different places where you state that you have been employed?

1905 A. That is correct. That has been my own personal experience.

Q. You heard Mr. Immerman testify this morning, did you, or did you not?

A. Yes, I did.

Q. He testified with respect to the clearance between different runs, that is, the "C" following the Loop run, and those following, the "A" runs and "B" runs, and so forth?

A. Yes.

Q. What is the purpose of clearance from the standpoint of the distributor?

A. Well, clearance, in my opinion, serves several purposes.

It is a protection to us. It is a protection to our customers, both the prior and the subsequent run.

In other words, we are interested in seeing that our customers do everything they possibly can to obtain a maximum result at the box office, because directly or indirectly, flat rental or percentage, we participate somewhere along the line in that result, so we—and it is essen-

tial that your first run, which charges a 75 cent 1906 admission, that you do not have theatres immediately following or playing with that theatre, that might charge 40 cents, or 30 cents or 15 cents; and that is true on each succeeding run.

As far as the subsequent run exhibitor is concerned, he is interested to the extent that the first run or the run

playing ahead of him does not abuse his priority of run by charging an inferior admission price; so it is a system best calculated to serve the interests of all of us.

Q. What would happen to the subsequent run if the prior run were able to sell at a very low admission price compared with the subsequent run?

A. Well, if the subsequent run could stay in business at all, which is hardly likely, the license fees, from our standpoint, would be so small as to be almost negligible; but in all probability he could not exist under that system of competition; he would be forced to go out of business.

Q. Were you familiar with the different theatres on the south side of Chicago—

A. In a gen—

Q. (Continuing:) —such as the Tivoli, the Tower, the Maryland, the Jeffery, and other theatres that have 1907 been discussed here?

A. Yes, I was, and am.

Q. And were you familiar with the locations and surroundings of them?

A. In a general way, yes.

Q. In the licensing of pictures on the south side, what outlets did you select for first run and the different runs following?

A. We selected the Tivoli Theatre because we felt that because of its size and location, management, showmanship connected with its operation, that it has previously demonstrated capacity to pay very substantial license fees, that it was the most desirable outlet on the south side. And next in order was the Southtown, or possibly the Avalon, comparable Theatres, the Capitol. Those theatres played in A week.

We selected for our B week runs, the Tower, the Piccadilly, the Stratford, and the Regal.

In the C week runs they were more numerous, but in that particular area that seems to concern us here, we just took the Maryland and the Jeffery Theatres as the next theatres best calculated to produce the maximum revenue in that given week.

Q. And how about the first week?

1908 A. In the first week we selected—

Q. First week of general release?

A. (Continuing:) —the Shore, the Jackson Park, the Lexington. Of course, there were a number of, quite a

few other first week houses on the south side, but those were the ones that we selected, with which we are immediately concerned here.

Q. And the second week, did you make any selection in this area?

A. We had the Hamilton, the Chelten, the Kimbark, and a number of others, quite a few other theatres on the south side, smaller theatres.

Q. On what basis was the selection made?

A. It is on a basis of—the primary things that we looked at was the size of the theatre, the appointments, its location, of great importance the capacity of the management with respect to theatre operations generally, and with reference to the theatre involved in particular, and then our previous experience in dealing with the customers.

Q. Are you familiar with the term called "mixed policy operation"?

A. Yes, I am.

Q. What do you understand that to mean?

1909 A. I understand that refers to an exhibitor who might seek to operate under a policy where he would buy different products in different weeks of release, and would vary his admission prices accordingly. In other words, he might buy my pictures in C week; he might buy from a competitor in B week, and he might buy from another competitor in first week; and the result would be, depending upon the license fee, that he would have to pay, varying with the weeks of release, he would undoubtedly have to vary his admission price.

Q. Is that a sound policy, in your judgment?

A. In my opinion it is a very unsound policy, and it is one not generally indulged in by exhibitors in this area.

Q. In the different contracts that you made with exhibitors, for the licensing of your pictures, there were minimum admission prices provided, were there not?

A. That is correct.

Q. That is, in the City of Chicago. Does that practice exist in other parts of the country, that you know of?

A. I am sure that that practice exists nationally; in so far as our product is concerned, that no contract

1910 is entered into that does not provide for a minimum admission price.

Q. What are the things that enter into the box office potentialities of a picture?

A. Well, there are many and various ingredients, mostly arrived at, I suppose, by experience, such as star values, the value of a well known story, and the capability of the producer or director, the general operating capacity of a given studio, and to have demonstrated past ability to turn out fine motion pictures or box office attractions; but when it is all said and done, the public, in the final analysis, is the one that determines whether or not the picture is a success or failure, that is, financially. If it is accepted by the public in large numbers, and does well at the box office, we consider it a success; and if the reverse is true, regardless of all the ingredients that may have entered into it, it is a failure, and that ofttimes happens, that you got the finest of ingredients and very expensive, elaborate production, and for some reason it is not accepted by the public, that can be a substantial financial disappointment and loss to us.

Q. Is it practical, from the standpoint of the distribu-
tion of pictures, also from the operation standpoint,
1911 for two theatres, in the same competitive area, in
close proximity, to exhibit in the same playing posi-
tion or same run?

A. That, in my opinion and experience, would be very bad, to have them play simultaneously.

Q. Why?

A. Well, there would be a definite tendency, or there would be—the result would be to split the patronage; they both would be charging the same admissions; they would not be able to cater to different people whose pocket books would vary, or who wished to play the—buy the picture, buy their entertainment, at a cheaper admission, plus the further fact that if they both played the pictures together, people in a given competitive area that were not available to see the picture, or to patronize the picture at the time it was being played, would not again have the opportunity, at least in that immediately neighborhood, to see it; whereas, if one theatre repeated on the other, the theatre repeating would charge a lesser admission, it would cater to those people ready willing and able to pay that lesser
admission, would also attract patrons that had not
1912 been able to see it in the first theatre when it was
playing in that particular theatre.

Q. Take two theatres in the same competitive area, substantially the same size, but one is located in such

manner as to have the greater potential drawing power of patrons, and the two are bidding for a run ahead of the other, a run ahead of one another, which one would you choose for the distribution of your pictures, assuming they were offering substantially the same amount of license fee?

Mr. Korfist: I object to that hypothetical question. It does not assume all the facts that have been established in this case.

Mr. Adcock: I think it does.

The Court: Read the question.

(Question read).

The Court: The objection is overruled. He may answer that question.

A. I would choose the theatre that has the better location, because it has been my experience that that is probably the most important factor, certainly one of the most important factors.

Mr. Adcock: Q. During this period that you were Branch Manager of the Chicago Exchange, did you know of 1913 any request or demand made by the operators of the Jackson Park Theatre to play in C week?

A. No, I never did.

Q. Did you have any talk with Mr. Salkin about it, Mr. Richard Salkin?

A. No, I never did.

Q. Did you ever meet any of the plaintiffs in this case?

A. I never have.

Q. Did you have any talk with anyone else than a direct representative of the Jackson Park Theatre with respect to Jackson Park moving to C week?

A. I did.

Q. With whom?

A. With Mr. James Coston of Warners, Warner Theatres.

Q. What conversation did you have with him?

A. Well, for several years Mr. Coston and—or in my discussions and negotiations with Mr. Coston and Mr. Halperin, they expressed a desire to move their Jeffery Theatre from C to B week; and Mr. Coston, or Mr. Halperin, I don't know which, indicated that if that transpired, that undoubtedly the Jackson Park would wish to move up to C week.

Q. What did you say?

1914 A. I told them that I would have to discuss any such change with my other customers who held clearance or comparable runs, and I would see what solution there would be to meeting their request.

Q. Did you have any further talks with Mr. Coston after that?

A. After that, I did, because I discussed the matter with Mr. Immerman of B. & K., and he was unwilling to waive the Tower clearance over the Jeffery, and I so advised both Mr. Coston and Mr. Halperin.

1915 Q. Who were the south side salesmen during the period that you were branch manager?

A. Gene Smith, Harold Wirthwein, Tom Gilliam, Ben Elrod. I believe they were at various times assigned to the south side zone.

Q. Did any of them ever inform you that the Jackson Park Theatre had asked for a better playing position than first week of general release, in connection with the licensing of pictures from Paramount?

A. I never heard anything about it from any of them.

Mr. Adcock: I wonder if I could get an exhibit here that has been marked. I would like Paramount Exhibit 1, I think it is.

Q. Do you remember—I think it has been referred to,—do you remember receiving any letter about July 6th, 1942, or dated about that date, from Mr. Salkin or from the Jackson Park Theatre, signed by Mr. Salkin, in regard to the Hamilton moving back?

A. I don't remember receiving such a letter, but I understand that such a letter was received and that it undoubtedly came to my attention.

Q. As between the Jackson Park Theatre and 1916 the Maryland Theatre have you any opinion as to which one of those theatres has the better location?

A. I do.

Q. And have you an opinion as to which one has the better drawing power because of such location?—Drawing power of patrons?

A. I believe in that respect that the Maryland Theatre is much superior to the Jackson Park.

Q. In licensing pictures for exhibition in theatres in a competitive area, is the only consideration the bid, or offer of the amount of dollars of one exhibitor against the amount of dollars of another exhibitor for the license and for a particular run or playing position?

A. No, it is not. That could not possibly be the controlling factor, because we not only have to take into consideration the amount of dollars offered, we have to be concerned with the amount of dollars that we will actually receive, and we know from past experience that, regardless of offer, the exhibitor making that offer must have a representative theatre, it must be well located, must be well managed, must have reasonably good appointments, must have size, and those factors all must be taken
1917 into consideration over and above any arbitrary dollar offer that any exhibitor might make.

Q. Do you know of any agreement or understanding between any of the exhibitors with respect to the amount of the admissions that any theatre should charge?

A. Would you repeat that question, please?

(Question read)

A. I know of no such agreement and I know I never had any.

Q. Do you know of any agreement or understanding between distributors in this case or any other defendant in this case with respect to double features, program double features?

A. I know of no such agreement.

Q. Do you know of any agreement or understanding between distributors and between anyone else, any other defendant in this case with respect to the—to the effect that the distributor should negotiate first with the circuits with respect to licensing pictures rather than other exhibitors?

A. No, I know of no such agreement, and, as a matter of fact, during the time that I was in charge of our Chicago office, as I have described, we have every theatre
1918 allocated to a different zone for which the salesman was responsible and we ofttimes concluded our negotiations with the same independent exhibitor before we had concluded with B.&K. or Warners or S.&S. or the Schoenstadts or the so-called more important ones, and we were ready, willing and anxious to sell and conclude our negotiations for the season's product just as rapidly as we possibly could.

Mr. Korfist: May it please the Court, I would like to have that answer stricken, all after the word "no."

The Court: Your motion is allowed. The question definitely calls for a yes or no answer. That is all that is going to stand, is "no."

Mr. Adcock: Q. Do you know of any agreement or understanding between any of the parties to this case, distributors or any other party to the case, with respect to the maintaining or continuing of any system for the release of motion pictures for exhibition in theatres in this city?

A. No.

Mr. Korfist: I object to that, your Honor. That is rather conjectural. I don't know what that means, myself.

1919 The Court: Well, he wants to know if there is any agreement, so far as this witness knows, in violation of any of the rights you claim have been violated because of the bill you filed here, and the witness says he doesn't know of any such thing.

Mr. Adcock: I think that is all, your Honor, as far as this witness is concerned.

The Court: You have some questions, Mr. O'Brien?

Mr. O'Brien: Just a couple.

Cross-Examination by Mr. O'Brien.

Q. During the time you were in charge in Chicago, what was the practice as to time of negotiation with the large and more important customers and the independent customers or exhibitors?

A. Well, as I stated, we had our—every theatre, every possibility belonged to a certain zone for which a certain salesman was responsible. I also had theatres for which I was personally responsible. Immediately that our season's product had been announced and we were ready and able to sell it, we would all proceed to our customers and attempt to negotiate and to conclude our sale or

1920 to conclude our negotiations, and I might possibly be negotiating with Mr. Coston or sitting in on a negotiation with the general or division sales-manager, and a salesman would be on the south side attempting to sell the Jackson Park Theatre, and we oftimes sold our independent runs before we concluded our circuit negotiations.

Mr. O'Brien: Q. As between the Jeffery and the Jackson Park, do you know of any reasons for selling one in a run prior to the run sold to the other?

A. Yes, sir.

Q. Will you state them?

A. Well, the Jeffery Theatre is better located, it is larger, it is better appointed, and it enjoys, based on our experience, a much better weekly gross than does the Jackson Park for those reasons.

The Court: Any further questions?

Mr. O'Brien: Q. Do you have any opinion as to whether the Jackson Park, had it played in C week since 1936, would have grossed as much as the Maryland Theatre did for those years playing in C week?

A. I don't believe—

1921 Mr. Korfist: Objection, your Honor.

The Court: What is your objection to that?

Mr. Korfist: Because this witness does not know, at least to my knowledge, what the admissions are of the Maryland.

The Court: I thought he testified here that he knew all about those things.

Mr. O'Brien: I so understood him to, your Honor.

Mr. Korfist: I may be mistaken, your Honor.

The Court: Well, let us find out from him. Does he know about the Maryland?

Mr. O'Brien: He testified about it.

The Court: I thought he did.

Did you testify you were familiar with the manner in which the Maryland Theatre has been running, the price they charged, and so forth?

The Witness: I did, your Honor.

The Court: The objection is overruled. He may answer the question.

The Witness: Will you read the question, please?

(Question read as follows: "Do you have any opinion as to whether the Jackson Park, had it played in C week since 1936, would have grossed as much as the Mary-
1922 land Theatre did for those years playing in C week?")

The Witness: My opinion is that it would not and could not have grossed as much.

Mr. O'Brien: That is all.

The Court: Mr. Seeley?

Mr. Seeley: No cross.

The Court: Then he is excused from further examination?

Mr. Korfist: I would like to have his cross-examination reserved.

The Court: Yes.

Mr. Adcock: It is understood that on all the witnesses the cross-examination is reserved.

The Court: All right. We will all take a recess at this time for about ten minutes.

(A short recess was taken, after which the following further proceedings were had herein:)

1923 Mr. Goldberg: I would like to call Mr. Goodman. Mr. Reporter, will you mark this map B. & K. and Paramount Exhibit 4.

(Map marked by the reporter as B. & K. and Paramount Exhibit 4 for identification.)

Mr. Goldberg: Mark these next two Defendants B. & K. and Paramount Exhibits 4-A and 4-B.

(Cellophane chart marked B. & K. and Paramount Exhibits 4-A and 4-B respectively, for identification.)

RALPH LEE GOODMAN, called as a witness on behalf of the defendant Paramount Pictures, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Goldberg.

Q. Will you state your name, please?

A. My name is Ralph Lee Goodman, G-o-o-d-m-a-n.

Q. Where do you live, Mr. Goodman?

A. 528 Belmont Avenue, Chicago.

Q. What is your business or occupation?

1924 A. I am in the advertising business, specializing in the home-to-home distribution of advertising material. Our services also embrace special studies for retailers and manufacturers, market studies, surveys of public opinion, surveys of products. We also serve as consultants to retail merchants in determining their market for distribution of advertising material,—the circulars which are delivered to the home, for instance,—and we also make studies of locations for retail organizations such as—some that we have served are A. & P., National Tea, Kroger's, Walgreen and others like that.

Q. For how long have you been engaged in that business?

A. I have been in that business for eighteen years uninterruptedly.

Q. What business were you in before you started in that business, Mr. Goodman?

A. Prior to that I was in the real estate and mortgage banking business, in business for myself for nine years, and as manager of the bond department of a bank, the Meyer & Keiser Bank of Indianapolis and Florida.

Q. Was that your first business experience?

1925 A. No. Prior to that I worked for the Chicago Daily News as an assistant to the circulation manager.

Q. Does that now complete the story of your business life and experience, business experience?

A. Outside the time I was an errand boy.

Q. What other activities have you been engaged in, Mr. Goodman?

A. Well, I was United States Supervisor of Censys, both the census of population and employment, or unemployment, in 1930,—and I have been active in other civic matters. At present I am chairman of the Chicago Census Advisory Committee, which committee was organized at the invitation of the Secretary of Commerce, Hopkins, for the purpose of assisting the Department of Commerce in expediting the census of Chicago. That committee is still in continuation and it is now engaged in the preparation of a study of Chicago based on the data gathered in the 1940 census, the census of population.

Q. Mr. Goodman, have you made a survey of the locations of certain theatres on the South Side of Chicago?

A. I have. If you are through with my other

1926 activities?

Mr. Goldberg: Oh, pardon me, sir. I did not mean to interrupt you.

The Witness: I had to jot down some of these.

I am chairman of the Business Research Committee of the Chicago Association of Commerce. That is a non-compensated job, that is it pays no money. I am also a member of the committee known as the Advisory Committee, the Advisory Board to the Chicago City Plan Commission. That is a committee appointed by the Mayor and approved by the Council, to sit in with the Plan Commission in planning a rebuilding of Chicago.

I am chairman of the civic committee of the Chicago Rotary Club; member of the Chicago Crime Commission; member of the executive board of the Chicago Urban League;

and vice-president of the Junior Achievement Corporations of Chicago, and of the Boys Brotherhood Republic. I presume that is what you wanted,—my activities.

Mr. Goldberg: That is right. Are you through?

The Witness: Yes.

Mr. Goldberg: Q. Have you made a survey of the theatres on the south side of Chicago with respect
1927 to their locations?

A. I have.

Q. What theatres have you so surveyed?

A. I studied the locations of the Tivoli, the Tower, the Maryland, the Jackson Park Theatre, the Avalon, the Shore, the Rhodes, and some of the theatres nearby those, some of the other theatres, but those are the principal ones involved in this hearing.

Q. At whose request did you make that investigation?

A. At the request of the defendants in this case, Warner Bros. and Famous Players—Balaban & Katz.

Q. Have you examined the map and the so-called overlays which have been marked B. & K. and Paramount Exhibits 4, 4-A and 4-B for identification?

A. I have.

Q. By whom was that map and those overlays prepared?

A. That was prepared principally by me and the rest under my supervision where I had to have the services of a draftsman.

Q. And what does that map and those overlays purport to show?

A. That map and the overlays show two things—or three things, rather. It shows the locality where these
1928 theatres are located and it shows the amount of business done in each one of the locations from the facts obtained in the United States Department of Commerce study published in 1939 from the census of business which was made in '35.

It shows also the location of the theatres and their playing position.

Q. Will you state again the basis for the map and the overlays—the bases from which these were taken?

A. The basis for that map and information I have obtained regarding those locations is taken from the census of business, 1935, a study of the geographic distribution of retail sales in Chicago, published by the United States

Department of Commerce in 1935; that is, the Bureau of the Census publishes that inventory of Chicago's retail business as well as other major cities in the country.

Q. And what do the different colors on the basic map which has been marked for identification B. & K. and Paramount Exhibit 4, show?

A. These colors show the relative size and importance in volume, of the different locations, the different
1929 business locations which are commonly referred to as shopping centers.

The lightest color is the yellow, and that is the smallest volume of business,—from 500,000 to one million and a half. Following that is the orange. The orange shows the volume of from 1,500,000 to two and a half million. The green, a volume of 2,500,000 to 5,000,000; the blue a volume of from 5,000,000 to 7,500,000; the purple from 7,500,000 to 10,000,000; and the red from 10,000,000 over and up to 30,000,000.

Q. Mr. Goodman, will you describe the different types of shopping centers which exist in the city of Chicago?

A. Well, to understand Chicago simply, the United States Department of Commerce, Bureau of the Census, has shown Chicago as a city of seventy-five communities. Chicago is frequently referred to as a city consisting of a number of little cities. Each one of these communities is pretty much self-contained; they are bounded by boulevards or railroads or rivers or important car lines, and they contain within themselves pretty much a popula-
1930 tion which is alike, a homogeneous population.

In each one of those communities are shopping centers or large business locations, and there are three kinds of business locations in Chicago, as you no doubt are familiar with. There is the major shopping center, the large business location. In that large business location is contained a great diversification of retail stores. You will find many stores there and many different kinds of stores, and it is accessible to a large population. The street cars serve it, the buses, the elevateds and the interurban trains, and it serves a great number of people. People can come to these major shopping centers and buy anything from a toothpick to a complete home of furniture, or even their automobile.

Between these major shopping centers there is another type of shopping center which is smaller. It is also a very

important shopping center in the city and it is called a minor shopping center. It does not have as many stores, it does not do as much business, does not serve as many people, because, after all, the amount of business you do depends on the number of people you serve. Where there are a lot of people, there is a lot of business done.
1931 Where there is a lot of business there must be a lot of people. So those minor shopping centers intervene; they locate themselves so as to intercept the flow of traffic to the major shopping centers.

Then there is a third type of shopping center, which is a minor shopping center. That is generally located between the major and—I have already mentioned the minor shopping center. There is a community shopping center or shopping street and generally that is located between the minor shopping center and the major shopping center. Just as the major shopping center or just as the minor shopping center locates to intercept the flow of traffic to the major shopping center, the community shopping center or the shopping street is located to intercept the traffic that flows to the minor shopping center. Now that is smaller in volume, has a less number of stores, less important stores, the average volume of business done in each store is smaller and it serves the more immediate need of the people around them.

Those are the three types of shopping centers or
1932 shopping business locations in the city of Chicago.

There is a fourth, but it doesn't play an important part, because that is the grocer around the corner, or the shoe repair shop. But the shopping centers are of three kinds, major, minor, and community.

Q. What did you do in your study of the shopping centers?

A. First I consulted the only authenticated public record of the facts regarding the amount of business done in each of these locations; that is the report I referred to, the study published from the United States Department of Commerce. From those facts I determined the number of stores in each of these locations, the kind of stores, the number of different kinds of stores, the total volume of business that is done in each location and the average sales of each type of store, and the total sales of each group of stores like general merchandising or drug or grocery or food.

Then I made a trip through the neighborhood and I

looked at those stores. I got my own impressions of the character of the stores, the appointments of the stores,
1933 the kind of fixtures they had and their appearance, fronts, and so forth. And then I traveled the territory and saw the theatres that are located in there. I obtained a list of the theatres involved in this case before you and I went into the theatre, as I understand you have done. I got my own impressions of the appointments of the theatres, the size of them,—the facts about the size I obtained from information in the License Bureau. Then I got the information of the playing position of these theatres, and I got that information from the attorneys for the defendants.

Then I related these facts, the size of the theatre with the size of shopping center, the number of theatres with the number of stores, the kind of stores with the kind of theatres, the volume of the store with the size of the theatre, and, when I put all these facts together and related one to another, I reached my opinions and conclusions regarding the superiority of one location to another, both as far as retail business is concerned as well as the location of the theatre is concerned.

Q. Mr. Goodman, based on your experience and on the studies which you have made, do you have an opin-
1934 ion as to whether the Maryland Theatre or the Jackson Park Theatre has the superior location?

A. The Maryland Theatre is by far—

The Court: The question is do you have an opinion.

The Witness: Yes, I have.

Mr. Goldberg: Q. What is that opinion?

A. My opinion is that the location of the Maryland Theatre is by far superior to the location of the Jackson Park Theatre.

Q. Will you tell us the basis of that opinion?

A. I told you about major shopping centers. The most important shopping center in the district, which could possibly affect the trade area of the Jackson Park Theatre is that shopping center on 63rd Street from Cottage Grove Avenue to Stony Island Avenue.

Mr. Goldberg: I suggest, Mr. Goodman, that it would be easier for you if you were closer to that map.

The Witness: All right.

(The witness takes a position in front of the map.)

The Witness: The outstanding and most important
1935 shopping center in this area,—this is the Jackson Park Theatre location there (indicating on map)—the outstanding and most important shopping center in all of this area is this location here on 63rd Street.

Some of the facts that warrant its being considered, in my opinion, the outstanding area, are these facts here:—There are a total of 416 stores in this area. The volume of business done in here is—

Mr. Goldberg: Pardon me. When you refer to "this area", will you describe the street you are talking about?

The Witness: This is 63rd Street from Cottage Grove Avenue over to Stony Island Avenue. It has 416 stores in there. They are comprised of 62 food stores, 12 general merchandise stores, 76 apparel stores, 14 automotive, 16 furniture and household group stores, 5 hardware and building material stores, 51 eating and drinking places, 14 drug stores, and 43 other kinds of retail stores that don't quite fit into this classification,—service stores, cleaning and dyeing and miscellaneous stores. This section
1936 on 63rd Street, from Stony Island Avenue to Cottage Grove, does $12,362,000 retail business every year. It is therefore important, because it does a large volume of business, and it does a large volume of business and is important because it serves a lot of people.

The Maryland Theatre is located in the shopping centers—if I may show this exhibit on here, or shall I go on with the locations?

Mr. Goldberg: Yes.

1937 A. This spot right here.—The color on here indicates that it is operated by B & K, Balaban & Katz. The size of the dot indicates it has from 1500 to 2000 seats. It has actually 1490, but I have made a grouping of 500 dots. The size of each dot is 1500 to 2500 or 3000, and 5000 over.

The Maryland comes in the group from 1500 to 2000. That is located right in the largest, most important and dominant shopping center in this area. Therefore, in comparison with this location where the Jackson Park Theatre is located, this dot indicates that the seating capacity of the Jackson Park Theatre is from 1000 to 1500. It actually has 1490 seats. The volume of business done in this business location, according to the same facts from

the United States Department of Commerce is from 1½ million to 2¼.

Q. When you say "this shopping center", Mr. Goodman, which one do you mean?

A. This one, the Jackson Park Theatre location, from 67th Street to 71st Street, on Stony Island. The actual volume of business done in this area, in comparison with 63rd Street, where the Maryland Theatre is located, 1938 is $2,467,000 annually, which has in comparison a total of 118 stores against 400 and some odd stores here; 28 food stores, 4 general merchandise, 24 apparel, 6 automotive, 4 filling stations, 7 furniture and household stores, 6 drug stores, and 21 normal type of stores.

From the number of people served in the area and from the number of stores or theatres inaccessible to that location, the Jackson Park Theatre location is inferior to the Maryland Theatre location. There are reasons why it is inferior, as this map will indicate, because here we have another shopping center to the south of it. On the Jeffery, which runs from 1800 to 2300, that does a volume of business a little larger than the Jackson Park Theatre. It is at 71st Street, the Jeffery Theatre. That Jeffery Theatre location does a volume of $4,932,000, about twice as much as the Jackson Park location on Stony Island from 67th to 71st Street.

So we see this minor or neighborhood shopping center wedged in between a major and minor shopping center, in accordance with the pattern that runs throughout 1939 the city. That answers the question as to why I consider the location of the Maryland Theatre superior to that of the Jackson Park Theatre.

Q. Do you have an opinion, Mr. Goodman, as to whether the location of the Tower Theatre is superior or inferior to that of the Jackson Park Theatre?

A. I have.

Q. What is that opinion?

A. The Tower Theatre location is also superior to that of the Jackson Park Theatre.

Q. Explain the basis or reason for that opinion?

A. The reasons are the same. This is near a contiguous shopping street, a part of the business on this part of the street, where people can come and trade in different types of stores. You can buy a $25 or a $3 pair of shoes there. There are a great number of stores and a

great number of theatres, because the people are there. It is superior because of more people being there.

Q. Your reason for that being superior is substantially the same as that you gave as to the Maryland Theatre?

A. That is right.

1940 Q. Do you have an opinion as to whether the location of the Tivoli Theatre is superior or inferior to that of the Jackson Park Theatre?

A. I have.

Q. What is that opinion?

A. The Tivoli Theatre location is superior.

Q. What is the basis or reason for that opinion?

A. These three theatres are in one major shopping center. The reasons are substantially the same.

Q. Do you have an opinion as to whether the location of the Jeffery Theatre is superior or inferior to that of the Jackson Park Theatre?

A. I have.

Q. What is that opinion?

A. The Jeffery Theatre location is superior.

Q. What is the reason or basis for that opinion?

A. On the basis of these facts from the study I have referred to, of the Department of Commerce, the geographical distribution of retail trade.

We have here the facts regarding the location of the Jeffery Theatre. That business shopping center runs from 1700 East on 71st Street over to 2300 East at Yates Avenue. That shopping center is one of the minor shopping centers of Chicago. It is next in importance to

1941 all the locations on the South Side of Chicago up to 91st Street, from the Park or from 63rd Street, in this section here.

Q. Which one?

A. This 71st Street-Jeffery section. There are 154 stores against the 119 in the Jackson Park shopping center. The volume of business here is $4,932,000, against the volume of business at the Jackson Park Theatre location from 67th to 71st Street, of $2,467,000, almost twice as much business from almost twice as many people that might have to be served there, or are being served there. That is a conjecture, but on the assumption that you cannot do business without people, you cannot do twice as much business without having that many more people to do business with. The average number of dollars per

store done in the 71st Street location is almost 35 per cent higher than the average dollars per store done at the Jackson Park location. For illustration, according to the facts in this study, the average volume of business per store at the Jackson Park Theatre location was $20,731 a year. If you took all the stores in this location, 1942 took the business done by all the stores, and divided it by the number of stores, it would be $20,731 per year per store.

Q. Which location?

A. From 67th and Stony in the Jackson Park location. If you take the number of stores at the Jeffery Theatre location, and add the business done and divide by the number of stores, you would have an average of $40,760 per store, almost twice as much, $40,760 against the $20,731.

Even on these statistics, it proves the point that this location is twice as good as the Jackson Park location. A man can open a store there and do twice as much business. It is borne out on the average. That would be substantially the reason why the Jeffery Theatre location is superior to that of the Jackson Park Theatre location.

Q. Do you have an opinion, Mr. Goodman, as to whether the Avalon Theatre has a location that is superior to that of the Jackson Park Theatre?

A. Yes, I have.

Q. What is that opinion?

A. The Avalon Theatre location is superior to 1943 the location of the Jackson Park Theatre.

Q. What is your basis or reason for that opinion?

A. This location is unique among the locations we are discussing here. You will notice on this exhibit that the Avalon Theatre is located here, and it is a theatre with between 2500 and 3000 seats. The color is yellow, which would indicate that the volume of business done is ½ to 2½ million. Actually, the volume here at the Avalon Theatre location is $1,064,000. Now, that is much less than the location of the Jackson Park Theatre.

However, except for the railroad that comes through here, there is another location that follows right up here. That is the same street interrupted by the railroad track, which is not a barrier, so far as not being able to cross over it. It runs from 1200 on 79th Street over to 1500, and this location runs from 1600 to 1900, so that we have an interruption of less than a block.

Over here we have a volume of business on this contiguous four blocks, which totals $2,644,000, a considerable bit of some $20,000 in excess of the Jackson Park 1944 Theatre location; but this volume is done with only 11 stores. The interesting part is that one store located there is owned by Sears Roebuck & Company. It is true that is only one out of eleven, but it is true that it probably does a million and a half of business. That location has one store doing a million and a half dollars worth of business a year.

Naturally, the people must come there. The location is there and the volume of business is there, and it would be reasonable to consider the Avalon as located within this shopping center, because these two are part of one. The theatre does not necessarily have to be located right next door to the shopping center or within the shopping center. If it is contiguous to it, it is in a position to benefit as to the location. The unique part of the business location is that the shopping center next to the Avalon Theatre can support a store of $1,500,000, because here we find a minor shopping center removed from a major shopping center, to enjoy a territory of its own, to the north as far as 71st Street, and to the south beyond 1945 the limits of this territory.

So we have a location which has demonstrated its value as an important shopping center, because it is doing a volume of business in excess of that of the Jackson Park location. One store's business is almost the volume of the Jackson Park shopping center entirely.

That warrants the opinion that the location of the Avalon Theatre is superior to the location of the Jackson Park Theatre.

Q. Mr. Goodman, do you have an opinion as to whether the location of the Grove Theatre is superior or inferior to that of the Jackson Park Theatre?

A. Yes, I have. The Grove Theatre location is superior to the location of the Jackson Park Theatre.

Q. What is the basis or reason for that opinion?

A. The volume of business of the Grove Theatre is substantially the same as the volume of the Jackson Park Theatre. In fact, it is a little larger. The Jackson Park Theatre has a volume of $2,467,000, and the Grove has a volume of $2,905,000. So on that simple compari- 1946 son, it is about the same.

It is superior because, here again, it is not sub-

jected to the influence of an important minor shopping center and the dominant shopping center of the location of the Maryland Theatre on 63rd Street, which exerts a heavy influence and draws business away, and has a territory of its own, of people, that stop the flow of trade from the Jackson Park Theatre,—serves as a barrier to stop traffic up to 63rd Street. So it has more territory of its own to exploit than the Grove.

Q. Than the Grove?

A. Rather, than the Jackson Park. The Grove has much more territory for its own than the Jackson Park Theatre.

Q. Do you have an opinion, Mr. Goodman, as to whether or not the location of the Shore Theatre is superior or inferior to that of the Jackson Park Theatre?

A. I have.

Q. What is that opinion?

A. The Shore Theatre is likewise superior in location to that of the Jackson Park Theatre.

1947 Q. What is the reason or basis for that opinion?

A. The Shore Theatre likewise is situated removed from the competitive influence of the two major shopping centers, which is proof of the value of the location on the basis of volume of business. This volume of business is comparable with that of the Jackson Park; not quite as much volume, $1,843,000 as against $2,467,000 of the Jackson Park.

Here are some of the interesting comparisons in this thing: the Shore Theatre, —if you take all of the stores in all of the shopping centers at 63rd Street; the Jackson Park, Jeffery, Grove, and the Avalon and Shore, and add up all the stores, and the amount of business done, you get a total average of $28,219,000, divided by the total of 899 stores in this area, in all the shopping centers where these theatres are located, you will find that the average store does $31,883 a year. That is the average for each store.

Now, in the Shore Theatre location, the average for the stores here, they average $25,000 a year. In the Jackson Park Theatre location, they average $20,000 a year; in the Jeffery Theatre location, $40,000 a year.

1948 Now, if you take the $31,883 and call that 100 per cent, that is the average for all of them. The Shore

Theatre's $25,000 volume would be 81 per cent of the 100 per cent; but the Jackson Park would average only 65 per cent. Each store of the Shore Theatre location averages about 15 per cent more volume than the stores in the Jackson Park Theatre location.

Over here they average 50 per cent more. At the Avalon it is 161 per cent of the average, which means they have almost 100 per cent more per store than the Jackson Park. At the Grove Theater location, it is 101 per cent against 65; so you have 36 per cent more business in the stores in the location of the Shore Theatre than in the Jackson Park Theatre location. These things point to the fact that the Shore Theatre location is superior to that of the Jackson Park Theatre. It has all this area to itself.

Q. When you say "over here" and "over there", will you name the section?

A. This Shore Theatre at 75th Street, is superior to the Jackson Park Theatre. Of course, it has about
1949 the same volume of business, but the stores do more business per store, and it has less competition from the major shopping center than does the Jackson Park, and therefore, is superior.

Q. What does this last overlay that you say you have prepared, show?

A. This shows the playing position of the theatres. In attempting to relate all of these facts about the volume of business, number of stores, size of theatres, and playing positions, I have prepared,—the whole picture can be seen as one.

Here we have the playing positions of the theatres; the Tower Theatre plays in B week position; the Maryland Theatre in C week position; the Tivoli in A, first or second week position; the Jeffery Theatre in C week; the Avalon Theatre, in A week; the Grove Theatre in C week; the Shore Theatre in general, one-week; and the Jackson Park Theatre in general, one-week.

Now, this overlay shows the pattern, the parallel of these factors of importance. If you consider the earlier playing position the more important playing position, which
I presume you do, or there would not be a lawsuit here,
1950 you will find that the superior playing position is in the superior shopping centers. It works out that way.

In this dominant shopping center on 63rd Street running from Cottage Grove to 71st Street, we have the

greatest number of stores, the greatest diversification of stores, the greatest volume of business. Here also we have the greatest size of theatres, the greatest number of theatres, or diversified playing positions of the theatres, and the most important playing position showing first.

In the Jeffery location, where we have a minor shopping center superior to the Jackson Park location, we have a superior sized theatre. My own impression was that the theatre itself was nicer and had better appointments, but its playing position is superior.

Mr. Korfist: I want to object to some of the remarks that this witness is making.

The Court: Those remarks may go out.

Mr. Korfist: Is he here as a salesman or as a witness?

Mr. Adcock: I move the remark of counsel may go out.

1951 Mr. Goldberg: He is testifying to what he has seen for himself.

The Court: We have gone along so far without any row, so let us go along as best we can.

The Witness: A. The pattern runs as I indicated, and my reasons are much the same way; the larger the theatre and the larger the shopping center, the more theatres and greater shopping centers, more volume of business and bigger theatres, and the playing position as you have seen it.

Mr. Goldberg: I would like to offer in evidence Balaban & Katz-Paramount Exhibits 4, 4-A and 4-B, which this witness has described.

The Court: Have you any further questions?

Mr. Goldberg: I do not have, no.

The Court: I suppose you are reserving that for Mr. McConnell in the morning. Have you gentlemen any question to ask Mr. Goodman? Step up here, Mr. Goodman. Have you finished, Mr. Goldberg?

Mr. Goldberg: Yes.

Mr. O'Brien: I am not sure whether I have or not, your Honor.

1952 *Cross-Examination by Mr. O'Brien.*

Q. I just want to ask Mr. Goodman whether, in his survey, he made any note as to the character of the stores in these various neighborhoods, one neighborhood as compared with the other.

A. I have made no notes. I have only made a survey.

Q. And you have given us all of the facts which you ascertained in your survey, is that right?

A. That is right.

Mr. O'Brien: That is all.

A. I took no pictures of the stores, I took no addresses down, but I have my opinion as to the types of stores.

Mr. O'Brien: That is all.

The Court: Mr. Seeley?

Mr. Seeley: No questions.

The Court: Is that all? That is all of you, Mr. Goodman.

Mr. Korfist: May I ask the witness if he has that Department of Commerce report with him?

The Witness: A. It is here.

Mr. Korfist: May we have it?

Mr. Goldberg: I suggest that it be marked Balaban 1953 & Katz-Paramount Exhibit 5, and I will offer it with Exhibits 4, 4-A and 4-B. That represents the sources of the material on the charts.

The Court: You can mark it and I will reserve the ruling. I take it, there is no objection to his looking at it?

Mr. Goldberg: Of course not.

The Witness: I made mention that the map,—if I may, the map on this exhibit is called an outline map, because it does not show all the streets. It is copied from the original map in this study, which original map I prepared for the United States Department of Commerce. It shows only that section which relates to the case before us.

Mr. Goldberg: That is all, I think, your Honor. I don't believe we have any other witness here this afternoon.

The Court: We will adjourn until tomorrow at 10:30.

(Whereupon the trial of the above entitled case was continued to Tuesday, February 29, 1944, at the hour of 10:30 o'clock a. m.)

1954 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Eastern Division.

Florence B. Bigelow, *et al.*,
vs.
RKO Radio Pictures, Inc., *et al.*

Before:

Igoe, J., and J.

Tuesday, February 29, 1944,
10:30 o'clock A. M.

Court met pursuant to adjournment.

Present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

The Court: Are you ready to proceed this morning, Mr. McConnell? Are you feeling all right?

Mr. McConnell: Yes, your Honor.

The Court: Now, the suggestion was made last night that the defense might put on another witness, and let them examine him in chief, then you could cross-
1955 examine that witness, then go back to your other cross-examination, or you could proceed with the cross-examination of some one of the witnesses who has already testified in chief.

Mr. McConnell: Well, from reading the transcript, it appears that Mr. Eckhardt wants to get away.

The Court: Tomorrow.

Mr. McConnell: Perhaps we could cross-examine him, and then he is free to go.

The Court: All right.

Mr. Adcock: Mr. Donohue, as your Honor knows, is from Dallas—

The Court: Yes.

Mr. Adcock: (Continuing:)—and I thought, at the same time, at the earliest convenience, he could cross-examine him.

Mr. McConnell: All right.

Mr. Adcock: I expected he would be here.

The Court: Mr. Eckhardt is not going until tomorrow, tomorrow evening.

Mr. Adcock: No, no. Tomorrow noon, twelve o'clock.

The Court: Tomorrow noon. You are going on a good train.

Mr. Eckhardt: Yes, sir.

1956 The Court: Well, all right. Maybe he wants to start on you, he said. You look like you were in pretty good health.

Mr. Eckhardt: Thank you, sir.

1957 CLYDE W. ECKHARDT, having been previously sworn, resumed the stand, was examined further, and testified as follows:

Cross-Examination by Mr. McConnell.

Q. You have been in the film business about twenty-five years, have you not, Mr. Eckhardt?

A. Film business? 29 years.

Q. Film industry?

A. Yes, sir.

Q. You have given all your connections with companies in that industry, in your direct-examination?

A. Yes, sir.

Q. No others you can think of?

A. No, sir.

Q. You testified that you did not know Edward I. Bloom, on your direct-examination. As a matter of fact, you did know Edward I. Bloom, didn't you?

A. Only as a name. I do not recall ever meeting Mr. Bloom.

Q. You knew that he was a builder, didn't you, on the south side?

A. I knew that he was the proprietor of the Jackson Park Theatre, yes, sir, but I never did business with him.

Q. Did you know that he built the Southmoor Hotel?
1958 A. No, sir.
Q. The Crest Hotel?
A. No, sir.
Q. Both of those hotels are near the Jackson Park Theatre, are they not?
A. I don't know, sir.
Q. You don't know whether they are there?
A. I have been to the Jackson Park Hotel—I mean the Jackson Park Theatre. I never took any notice of the hotels about there; I don't know them.
Q. How long have you known of a system of release of motion pictures in Chicago?
A. The system? You mean under which they operate?
Q. Yes, a system.
A. As it formed itself, and as it progressed, that would be.
Q. No. A system. You know what the word "system" means?
A. Yes, I think I do.
Q. All right. How long have you known of a system of release in Chicago?
A. I would say 1925, '26, as a system.
Q. And you testified on your direct-examination, as I recall, that you went to Balaban & Katz and Warner Bros. and some other circuits and tried to introduce a
1959 system of your own, is that correct?
A. That is, sir.
Q. What was the nature of your system?
A. Mine was to extend the present from seven day periods to fourteen day periods, commencing with C week of release.
Q. And when did you do this?
A. I can not recall the year. I believe I testified '39, '40, but it is a matter of record in the Master in Chancery's court, before Mr. McDonald, where I made an affidavit or a deposition.
Q. What matter was that?
Mr. Seeley: I object to that as immaterial.
Mr. McConnell: Well, he said it is a matter of record.
The Court: Objection overruled.
Mr. McConnell: Now, I am asking him where.
The Court: All right.

Mr. McConnell: Q. Where was that?

A. Master in Chancery's court, wherever it was. I don't know what building.

Q. Well, I know, but what was the matter?

A. It was in relation to some case that the Allied were attempting to bring forward. About what, I don't recall.

1960 Q. In that you made an affidavit?

A. Endeavoring to introduce that system, yes, sir.

Q. Now, you say it was about 1939 or '40 that you tried to introduce the system?

A. Yes, sir. I can not tell you the exact date, but it was in that neighborhood.

Q. Well, would it be about the time that you negotiated for the sale of your pictures?

A. Yes, sir.

Q. And that would be about what time of the year?

A. That might have been in the early part, in July 1st of August, some time around that period. I could not say exactly what time.

Q. Well, did you, as a matter of fact, negotiate a contract for that year?

A. I did.

Q. With Balaban & Katz and Warner Bros., both?

A. I did not complete the contract. I negotiated in an effort to change that in the manner I described, with Balaban & Katz, with Warner Bros., with the Schoenstadts' circuit, Jack Miller's circuit, maybe one or two others, I do not recall.

Q. But after all of your negotiations you did enter into a contract with Warner Bros. and with Balaban &

1961 Katz?

A. On the old system.

Q. On the old system?

A. For the reason that I——

Q. No. I did not ask you for the reason.

A. All right, sir.

Mr. McConnell: Q. In other words, Balaban & Katz and Warner Bros. insisted on having the old system, in your contract?

A. No, sir. That is just to the contrary that I was trying to tell you.

Q. Well, your answer, then, is "No"?

A. Yes, sir.
Q. I am wrong?
A. All right.
Q. But they did not accept your system?
A. They were agreeable to accept my system, but in as much as I was unable to press—
Q. Now, just a minute. They did not accept your system, did they?
A. They would have.
Q. Well, did they?
A. No, because I made the contract to the contrary, later.
Mr. McConnell: I ask that the witness's explanation go out, as not responsive.
1962 The Court: It may go out.
Mr. McConnell: Q. Now, you are familiar with that Chicago suburban system of release, are you not?
A. Yes, sir.
Q. And you have been for a number of years?
A. Yes, sir.
Q. You are also familiar with the playing positions of practically every theatre in the Chicago Exchange District, are you not, Mr. Eckhardt?
A. Yes, sir.
Q. And you have been for a long, long time?
A. Yes, sir.
Q. Now, negotiating for the sale of pictures, with Balaban & Katz, you first agree on a clearance schedule, do you not?
A. Oh, not necessarily first. We may be discussing both the terms and playing position at the same time, or during the same conversations.
Q. But it is all part of your negotiation?
A. Yes.
Q. And that is so for each year?
A. Yes, sir.
Q. For the product of the years up to the year 1940, is that right?
A. Yes.
1963 Q. Before the consent decree?
A. Yes, sir.
Q. And since the consent decree, you negotiate clearance for the year, do you not?

A. Yes, sir, with all accounts.

Q. Besides the city release, there is such a thing known as country release, is there not?

A. Well, it is country release, is not governed by the clearance in the city, granted in the city release, yes, sir.

Q. Your country release is at the edge and boundary of the city release?

A. Well, some of it goes pretty far south into the State.

Q. Well, how about St. Charles, how far does it go out there?

A. St. Charles is governed by city release.

Q. Are you sure about that?

A. No, by Aurora—

Q. It is governed by country release, isn't it?

A. By country release, that is correct.

Q. So that St. Charles gets pictures about six weeks ahead of Wheaton, does it not?

A. Well, that depends on where Aurora plays them.

1964 Q. Now, you sign the contracts on behalf of Twentieth Century-Fox, do you not?

A. No, sir.

Q. You do not?

A. No, sir.

Q. I show you Plaintiffs' Exhibit 54,—

The Witness: Contracts are signed by our executives in New York City.

Mr. McConnell: Q. Well, I show you Plaintiffs' Exhibit 54, and ask you to examine that document.

A. Yes, sir. That is the clearance—

Q. Well, you sign the clearance, then, is that it?

A. Yes, sir.

Q. And that is part of your deal, the picture deal?

A. Well, the contract itself is executed in New York. The clearance I sign for the Company, after the contract was approved.

Q. Well, you sign your clearance before or after—

A. No.

Q. (Continuing:) —the contract is signed?

A. I sign it at the time, after our clearance was—and after our contracts were accepted by New York.

Q. Let us get this clear now. You say the contracts for the product are signed in New York?

A. That is right.

1965 Q. And you sign the clearance schedule?
A. Yes, sir, because I am more familiar—
Q. No, I didn't ask you "because".
A. All right.
Q. And the clearance schedule is such a document as is shown here by Plaintiffs' Exhibit 54, is that correct, the document I just showed you?
A. I presume that is the clearance schedule.
Q. Now, the thing I want to get at, Mr. Eckhardt, is the time of the signing of these two documents, do you sign the clearance agreement first, you and the Balaban & Katz people, that is, ahead of the product contract?
A. Oh, I don't agree to that.
Q. Well, what is the fact, do you sign it before or do you sign it after?
A. The clearance schedule is usually signed when the contracts come back, and all completed at one time. When they accept the terms, I accept the clearance.
Q. When they accept the terms, who are you talking about?
A. New York City. When they accept the deal that I submit.
Q. When they have advised you that the deal is 1966 a proper one, then you sign the clearance?
A. Yes.
Q. And the deal is closed?
A. Yes, sir.
Q. And that clearance schedule, for a Company such as Balaban & Katz, covers all their theatres, does it not?
A. Yes, sir.
Q. Is a request for that clearance submitted to you by Balaban & Katz?
A. No. It is negotiated between Balaban & Katz and I.
Q. All right. Now, how is that negotiation done, is there any correspondence about it?
A. No; in conversations when we are negotiating the deal.
Q. Talk across the table?
A. Yes, sir.
Q. And do you have before you any other documents to which to refer?
A. I might have the previous year's clearance before me, yes. I could not remember the detail of it without that.
Q. That is what I am getting at. You have to have something.

A. Yes. That is what I say.

1967 Q. (Continuing)—before you, to remember the detail of all these theatres, wouldn't you?

A. That is right. That is correct.

Q. So that you do not discuss each theatre situation in detail; you refer to the clearance of the other year and draw your deal and submit it to New York; and they sign it, and that is that, isn't that the situation?

A. That is about it, yes, sir.

Q. Now, is this negotiation done, carried on at the time of the sale of the Loop pictures?

A. Yes. Pardon me. I said, yes, sir.

Q. By the way, I notice here in one of these clearance schedules, I am referring to Plaintiffs' Exhibit 58, in referring to the LaGrange Theatre, the theatre to play in pre-release week, it is provided that the Village of Western Springs is not to play prior to third week. There never was a theatre in Western Springs, was there?

A. Not to my knowledge.

Q. There is not now?

A. Sir?

Q. There is not now, is there?

A. I don't know.

1968 Q. So that you provided here that Balaban & Katz was to have clearance over a theatre not then built?

A. That has been customary in clearances.

Q. That is what I want to get at. Is that customary?

A. It has been with us, sir. We have many contracts with that end. Where they are, I cannot recall, but I know that is a custom over towns.

Q. That is, a custom, and under that custom it would make no difference what kind of a theatre was built in that particular spot; with that contract, the Balaban & Katz would have clearance?

A. For the period of the contract, yes, sir.

Q. Well, that brings up another point: Clearance only runs with the contract, and expires at the end of the contract, isn't that correct?

A. Yes, that is correct, sir.

Q. So that no theatre has, what you might call, a vested interest in a playing position?

A. That is correct.

Q. That has been the position of your Company in a number of instances, hasn't it?

A. That is right.

Q. That no theatre has a vested right to any par-
1969 ticular playing spot?

A. That is right.

Q. Now, this so-called system of Chicago and suburban release, you say these companies prefer that to yours?

Mr. Seeley: I object. He didn't say that.

Mr. McConnell: All right. I withdraw that. I don't want to put words in the witness's mouth he did not say.

Q. You did say that you had a system which was not agreed to?

A. By the majority of accounts, yes, sir.

Q. And you did say that Balaban & Katz and Warner Bros. agreed to this suburban, or Chicago and suburban system of release?

A. They would have, yes, sir.

Q. And they did?

A. They agreed that if I put it up that way that they would, yes, sir.

Q. And they did, and it went into the contract that way?

A. No, it didn't go into the contract.

Mr. O'Brien: I object. They are both talking about two different things.

Mr. McConnell: Q. Well, are we talking about
1970 different things, Mr. Eckhardt?

A. I don't know. I never have said to you that I had a contract. I said I endeavored to put that system into operation, and that I discussed it and negotiated with several people on it, and they were agreeing—

Q. All right, now, just a minute.

Mr. O'Brien: Let him finish his answer.

The Witness: They were agreed, and when the majority came behind them I could not put it over.

Mr. McConnell: Q. I asked you whether or not the Chicago and the suburban system of release was put in your clearance contracts, and you said it was.

A. What is that? I did not hear your question.

The Court: Read the question.

(Question read.)

The Witness: A. That is correct.

Mr. O'Brien: I objected. The contract speaks for itself, as to what is in there, and the witness's characterization of it is not binding on anybody.

The Court: I think that is a good suggestion.

Mr. McConnell: I think, if the Court please, I have a right to cross-examine this witness on this system of re-release. He testified at length—

1971 The Court: You are getting along all right.

Mr. McConnell: Q. Now, Mr. Eckhardt, you did not assume when this system of release, designated as the Chicago and suburban system of release, was put into your contract, that that was something unique and peculiar so far as the Fox situation was concerned?

Mr. Adcock: I object to the question, on the ground that it assumes the Chicago and suburban system of release was a designated thing.

Mr. Seeley: I have the same objection.

Mr. Adcock: It does not appear in the evidence at all.

Mr. Seeley: I would put it this way, your Honor: So far, it has not appeared that the Chicago, the so-called Chicago system of release is anything but the contracts. You cannot put into a contract what does not exist, until the contracts are signed.

Mr. McConnell: This witness testified yesterday, as I recall from reading his transcript, that this system of release was nothing but a custom of some kind.

The Court: Well, I think he may cross-examine him about the contract. Of course, he cannot change the terms of the contract. That is in evidence.

Mr. Adcock: The objection I have—

1972 The Court: Sir?

Mr. Adcock: The objection I have is to the question, designated Chicago and suburban system of release. I do not understand that there is any designated Chicago and suburban system of release in any contract, and it does not appear yet, and the witness has not testified. There is no evidence of that fact.

The Court: What territory does your release system cover?

Mr. Adcock: Well, may the answer be read on that, your Honor? I think your Honor will immediately see that.

The Court: I asked you that, what territory does your system of release cover here? Does it cover just the city or is there suburban territory?

Mr. Adcock: The contracts are made with reference to releasing. They are usually made to cover the City of Chicago and part of the surrounding territory which may be called the suburbs.

The Court: Well, isn't that what his question is?

Mr. Adcock: I think the question is, if we may have the question read—

The Court: Let us have it read.

Mr. Adcock: I think your Honor will see the ob-
1973 jection immediately.

The Court: All right, sir.

Mr. Adcock: Your Honor will see the objection which I am making.

(Question read.)

Mr. Adcock: The objection that I have is: Designated the Chicago and suburban system of release. There is no such evidence. It is an assumption.

The Court: I think he can answer that question.

A. Well, maybe I don't quite understand the question.

The Court: If you don't, just say so, and he can ask you another one.

The Witness: Pardon me. Where I am confused is, are you talking about a system, or whatever you care to call it, that I endeavored to introduce, or that which was in effect?

Mr. McConnell: I am talking about that which is in your contract.

A. Well, my present contract, I don't think that is unusual, no, sir.

Q. It was not unusual, and it was not unique so far as the Company was concerned, was it?

A. That is correct.

1974 Q. Well, you had knowledge at that time that that system of release was used by all the distributors, did you not?

A. I knew that they were using it, yes, sir.

Q. Sure; and you also knew what the minimum admission price schedule was on each of the runs which are set forth in that schedule, didn't you?

A. Yes, sir.

Q. You have known that for a long time?

A. Yes, sir.

Mr. O'Brien: In what schedule?

Mr. McConnell: The witness understands what I am talking about.

Mr. O'Brien: I don't understand the question. I object to it as not clear. If you are talking about the schedule of the Fox contract, that is one thing; if you are talking about the schedules of other contracts—

The Court: You are talking about the schedule mentioned in the contract. That is what you are talking about, isn't it?

Mr. McConnell: Exactly. That is what I am cross-examining the witness about, if the Court please.

Q. Now, does your Company have an interest in these Loop runs, in the box office receipts—

1975 A. No, sir.

Q. (Continuing)—in any way?

A. They have in certain, on certain engagements, yes, sir, a percentage interest.

Q. Well, is it usual to sell your pictures in the Loop on a percentage basis?

A. Some are percentage sharing arrangement, and some are flat rental.

Q. And you do sell them to the Balaban & Katz theatres in the Loop?

A. Yes, sir, and we also sell, or have sold, a few at the Oriental first run, and also to the Palace on occasions.

Mr. McConnell: Now, I ask that the last two statements go out.

The Court: They may go out.

Mr. McConnell: Q. Now, the Loop run under this system has 21 days of what you call clearance, over the A run, that is correct, is it not?

A. I think it is 21, 14 or 21.

Q. Well, you know it has a three weeks clearance—

A. Over the "A".

Q. You know that, Mr. Eckhardt, don't you?

A. Sir?

1976 Q. It has three weeks clearance.

A. All right. Well, I am trying to be frank, and honest, and I was confused for the moment. I guess it has. On occasion, many years ago, it was fourteen, and then it changed back to twenty-one days.

Q. What is the purpose of that 21 days?

A. To protect the engagement down town, and get the most revenue at the box office possible out of the picture at the admission price.

Q. At the set admission price in the Loop?

A. Yes, sir.

Q. And the purpose of that is to stop the competition of any other theatre, with your Loop run, isn't it?

A. Yes, sir.

Q. All right. After the Loop run and your three weeks, you have got your A weeks, three A weeks, right?

A. That is correct.

Q. And what is the minimum admission price of the A runs?

A. Evening adults, 50 cents.

Q. 55 with tax?

A. Maybe so.

Q. Right?

A. 55 with tax.

Q. Now, why is that minimum admission price 1977 inserted in your A run?

A. That is to restrain any competition playing at a lesser admission than that particular price.

Q. So that your Loop run won't have any competition with any cheap admission prices in that week, right?

A. Are you talking about the Loop now?

Q. What are you talking about?

A. Well,—

The Court: You were talking about A run in the last question put to him.

The Witness: Yes, sir.

The Court: Is that right?

The Witness: That is what he asked last, that he was talking about A.

The Court: You asked him about the Loop prices, then you asked him about his A run.

Mr. McConnell: Read my question to him, please, then we will see what it is.

(Record read.)

Mr. McConnell: I will withdraw that question.

Q. You have no theatres, Fox has no theatres in A run, do they?

A. You mean that we own?

Q. Yes.

A. No. We own no theatres in the City of Chi-
1978 cago.

Q. But you insert in the contract a provision that no A theatre shall play below a minimum of 50 cents, right?

A. That is right.

Mr. Seeley: I object to that. The contract speaks for itself. The fact of the matter is that that is not what the contract provides.

Mr. McConnell: This man has testified as an expert

here to the whole business, I think I have a right to cross-examine him on everything in it.

Mr. Seeley: It does not make any difference about the terms of the contract, which is in writing, and in evidence.

The Court: Well, he can interrogate him about the terms of the contract, can't he? He can not change the terms, of course.

Mr. Seeley: That is what the purport of the question is.

The Court: I did not understand that. You do not think you are changing the terms of the contract, do you?

Mr. McConnell: Certainly not, if the Court please. I want to show what this man knows about this business.

1979 The Court: The objection is overruled.

Mr. McConnell: Read the question to the witness, please.

(Question and answer read.)

The Witness: I answered that.

Mr. Adcock: I move to strike that answer. As I understand, there is no such provision in any contract that no A theatre shall play below 55 cents.

The Court: I did not hear that.

Mr. McConnell: Mr. Adcock, do you want to testify here? There is a witness on the stand. He is their witness, and I have a right—

The Court: The motion to strike the answer is overruled.

Mr. Adcock: Well, the contracts are in evidence.

The Court: We have said that two or three times, and I do not think anybody is going to change that. Whatever they are, they are; but he is entitled to talk to this man about what is in those contracts.

Mr. Adcock: All right.

Mr. McConnell: Q. Your Company inserts in your contracts provisions forfeiting that run if the lower admission price than that minimum you have referred to, is

1980 charged, isn't that correct?

A. It is.

Q. Now, is there anything unique or unusual about that?

A. Not that I know of.

Q. It is done by all the other companies, too, isn't it?

A. I assume, but I can not answer for the other companies.

Mr. O'Brien: I object to what the others did.

Mr. Adcock: I object.

The Court: Objection sustained.

Mr. Seeley: When there is an objection made, wait.

The Witness: I have not heard the objection.

Mr. Adcock: I move that the answer so far be stricken.

The Court: The answer wherein he said, "I assume" may be stricken.

Mr. O'Brien: We are interested, Mr. Witness, in what you know.

Mr. McConnell: Well, that is what I am trying to get at, if the Court please, is what this man knows.

The Court: But you know an answer wherein he says "I assume" something, that is not an answer that can stand very long if they make an objection. Their motion was to strike that answer. That motion has been
1981 allowed to that part of the answer.

Mr. McConnell: Q. Well, as a matter of fact, you have seen contracts of the other exhibitors, have you not?

A. As a matter of fact, I have not ever.

Q. You have testified as a witness from time to time on a number of cases in which they were involved, have you not?

A. Yes, I have testified where other companies were involved, yes sir, but I have not seen their contracts.

Q. You testified here the other day that this contract was used all over the country?

A. What contract?

Q. The contract I am referring to, the Fox contract, which provides for termination of a run if there is a departure from the minimum admission price.

A. Well, I don't recall testifying to it. I don't recall the question coming up that it was used all over the country.

Q. You do know, however, and you have known for a long, long time, that the A houses charge fifty cents admission price?

A. Yes, I know that, sir.

Q. And the "B" houses charge 40 cents?

1982 A. Minimum.

Q. You have known that?

A. Minimum, yes, sir.

Q. And the "C" houses charge 30 cents?

A. Minimum, yes, sir.

1983 Q. Now, what is the purpose of the B minimum admission of 40 cents?

A. The same as in the A's.

Q. And the same thing is true in the C?

A. C and from there on down.

Q. From there on down. You have been here and heard all the testimony in this case, haven't you?

A. No, sir, not all of it. I was not here when the case opened and I was absent in the very first week that I came here.

Q. But you have been here for most of this trial?

A. Well, been here for a good portion of it.

Q. You have listened to the arguments of the counsel on various motions?

A. I don't know—I know what I heard. I was not here—your case here began on Monday, I was informed. I did not get here until Tuesday, Wednesday,—Thursday I went down to New York and I did not come back until Monday and I was here—I was away one or two days at that time.

Q. Well, you know what the issues are in this case?

Mr. O'Brien: I object to that.

Mr. Seeley: I object to that.

The Court: Objection sustained.

1984 Mr. McConnell: Q. Now, you testified with reference to the Jackson Park Theatre about its different playing positions. Do you recall that testimony,—yesterday?

A. I recall discussing the Jackson Park playing positions yesterday, yes, sir.

Q. Now, did you know what the other distributors did with reference to the playing position of the Jackson Park?

A. No, not necessarily.

Q. Well, did you know?

A. Why, I presumed that they played in the same playing position.

Mr. O'Brien: I object and move it be stricken and I ask the Court to instruct the witness to testify to only what he knows.

Mr. McConnell: Well, it may be an assumption, but if a man that has been in the business twenty-five years

and has all the knowledge and background this witness has, it might be knowledge.

The Court: The word "assumption" is what he objects to. We are not interested in what you are assuming or guessing; what they want is the facts.

Mr. McConnell: Q. When you say "assumption" 1985 you mean your knowledge of what you know in the industry; isn't that a fact?

Mr. Adcock: I object to that.

The Witness: Pardon me. I could not swear that all other companies played their pictures in that particular week, because I don't check them to find out. I would have—under oath I would have to check right straight through to say that they played in the first week of general release, and that I have not done.

Q. Well, you do do that, don't you, from time to time?

A. Do do what?

Q. You check dates?

A. No, sir, I said I do not check them. That is what I would have to do to answer that question definitely. I don't check their playing time.

Q. But you have checked in the past, haven't you?

A. I beg pardon, I have not; I said I have not.

Q. You don't check-date the pictures?

A. I don't check-date other companies' pictures, no, sir.

Q. All right, then, how do you know that other distributors aside from your own company played pictures on the dates, on the play dates which you have tes- 1986 tified here about the Jackson Park?

A. Why—

Mr. Seeley: I object to that, because he has not so testified. He said he did not know.

Mr. McConnell: He gave a very detailed description here of what the playing position of the Jackson Park with reference to the industry was.

The Witness: No, sir,—with reference to our pictures.

Mr. McConnell: Q. Then you were only testifying as to your pictures, is that right?

A. Yes, sir.

Q. And you were not testifying as to any other distributor or any other pictures?

A. No, sir.

Mr. O'Brien: He said he was not.

Mr. McConnell: What is a mixed deal?

The Witness: A mixed deal?

Mr. McConnell: Yes.

The Witness: I don't know. I have never heard the remark "a mixed deal."

Mr. McConnell: Q. Well, did you hear Mr. Adcock ask Mr. Immerman about a mixed deal?

A. Not a mixed deal I did not.

Q. Have you ever known of a theatre playing a 1987 part of the product in A week and part in B week?

A. It is possible. I think possibly the Capitol did that.

Q. Would that be a mixed deal?

A. Well, I don't know if that would be called a mixed deal, or what it would be called. It has never been called anything in my experience as a mixed deal.

Q. Well, let me ask you this: If a theatre playing a 40 cent admission price was playing your product in B week, what does that mean to you as an expert in the industry so far as their run of other pictures is concerned?

Mr. Seeley: I object to that as not intelligible.

Mr. McConnell: He is an expert. He is testifying here as an expert.

Mr. Seeley: Ask him a question that is intelligible. It does not mean anything.

The Court: Do you understand the question?

The Witness: No, I don't quite understand it, because he is using the word "mixed" and frankly I never heard the word "mixed" used.

The Court: Suppose you frame a different question.

Mr. McConnell: Well, I have left the word "mixed" 1988 out. Let us read the question again to the witness. We are way beyond "mixed."

Mr. Seeley: I object to it, as I cannot understand the question.

The Court: Let us see if the witness understands the question. Do you understand it, Mr. Witness?

The Witness: Why, that would only mean, in my mind, that he had not sold the run to someone else.

Mr. Seeley: I move to strike the answer, because I cannot understand that.

The Court: Do you understand the answer?

Mr. McConnell: No, I don't.

The Court: Well, then, let us strike the answer. Neither one of you understands that. The question was whether he

understood the question. Do you understand the question, Mr. Witness?

The Witness: No, I do not.

The Court: All right, then we will start all over again.

Mr. McConnell: Q. It would be very unusual, would it not, Mr. Eckhardt, to find that a theatre which is charging 40 cents admission price and is playing your product in B week would play the product of another distributor in a different week?

1989 A. That depends on how they bought it, what one they bought.

Q. Well, would it be usual or unusual?

A. Sir?

Q. Would it be usual or unusual?

A. I would say it would be unusual.

Q. It would be very unusual, wouldn't it?

A. No, I won't say very unusual. It depends on how it was sold.

Q. Now, getting down to this question of the—

The Witness: Sir?

Mr. McConnell: Q. Getting down to this question of the Marbro and Granada, that subject matter,—

Mr. Seeley: I am sorry. I did not hear.

(Record read.)

Mr. McConnell: Q. You testified, as I recall, that you had been trying to get your product into the Balaban & Katz Theatres in the years 1927 and '28; is that correct?

A. 1927-28, or 1928-29, something in that neighborhood, yes, sir.

Q. And you had not been able to do it?

A. That is correct.

Q. Now, is it a fact that you had actually made a deal between your company and the Granada and Marbro

1990 Theatres for product for those theatres for the year 1928?

Mr. Seeley: When? I object to it because the time was not specified.

The Court: 1928 I thought he said.

Mr. McConnell: That is what I did say.

The Witness: ~~A. No.~~

Mr. McConnell: Q. You had not made a deal, is that your position?

The Witness: A. Yes, sir, with the Marbro and Granada.

Q. Well, had you made a deal with Marx Brothers?

A. No, sir. I made no deal with any one for the Marbro and Granada Theatres.

Q. Do you know Mr. Coston, Mr. James E. Coston?

A. Yes, sir.

Q. He has been sitting here in the court room part of the time during this trial, hasn't he?

A. I noticed him here a couple of days, yes, sir.

Q. Who is he with?

A. Warner Bros.

Q. Did you have some conversations with Mr. Coston about leasing the product of your Fox Film Company for the season 1928 and 1929 for exhibition in the Mar-
1991 bro and Granada Theatres?

Mr. O'Brien: I will object to that, unless he makes it plain that at that time Mr. Coston had no connection with my clients.

Mr. McConnell: Well, I will state that for the record, if he wants that statement.

Mr. O'Brien: All right.

The Court: That is all he wanted, so you have stated it, and that satisfies his objection.

Mr. McConnell: Read the question to the witness, please.

(Question read as follows: "Did you have some conversations with Mr. Coston about leasing the product of your Fox Film Company for the season 1928 and 1929 for exhibition in the Marbro and Granada Theatres?")

The Witness: A. After I had negotiated the deal with Balaban & Katz for pictures that season.

Mr. McConnell: Q. Your did not have any conversation with him before that time?

A. Not in negotiating the contract, no, sir.

Q. Well, did you have any conversation with him about submitting pictures for the Marbro and Granada Theatres?

1992 A. After I had consummated my deal with Balaban & Katz, yes, sir, for four pictures with Balaban & Katz and a run downtown.

Q. Did you submit a proposition, made by Mr. Coston, to your New York office to take twenty out of a total of forty-five pictures which were offered by your company?

A. After we had made our deal for the four pictures.

Q. Did you have a conversation with Mr. Coston about June 15th, 1928—

A. Why, I cannot answer that. I don't know. I don't recall.

Q. —in which you told him that on account of the large amount of business that Balaban & Katz had given your company you had been obliged to give them the selection of four out of the eight of their special projections?

Mr. Adcock: I object to that, your Honor.

Mr. McConnell: (Continuing)—and would not eliminate those pictures from the Granada and Marbro Theatres' program?

The Court: What is the objection?

Mr. Adcock: My objection is that he asked him if he recollected a conversation at a certain time. He said 1993 he did not recall a conversation at that time.

Mr. McConnell: I asked now if he said something?

The Court: He wants to lay the ground for impeachment. Isn't he permitted to put the question that he just put? The objection is overruled.

The Witness: Well, I recall conversation. I cannot fix the exact date or time, but in which I informed Mr. Coston that four subjects which were selected were sold to Balaban & Katz and that we were quite agreeable to sell them the selection from the balance of the product that we had. That I recall.

Mr. McConnell: Q. Well, then, the position is this, is it not, that up to a point—

The Witness: Wait a minute. I did not get the start of your question.

The Court: "The position then is this, that up to a point."

The Witness: All right.

Mr. McConnell: (Continuing)—in 1928, you had tried to get the business of Balaban & Katz and you had not got it, is that not right?

The Witness: And I had not got it?

1994 Mr. McConnell: You had not got it.

The Witness: That is correct.

Mr. McConnell: Q. And then the Granada and Marbro Theatres wanted some pictures from the Fox Film Company: right?

A. We had sold them pictures.

Q. And they wanted some of your other product in 1928?

A. We gave them some and sold them some.

Q. And they wanted some more?

A. They wanted the four that we had sold away from them, yes, sir.

Q. And then it happened that you did place your product in the Balaban & Katz Theatres at that time?

A. Four pictures, yes, sir.

Q. Well, you placed more than that, didn't you?

A. Outlying, that season, we played but four.

Q. Those were your four big pictures?

A. They were among our big pictures.

Q. And up to that time you had not been able to place any with Balaban & Katz, had you?

A. That is correct, sir.

Mr. McConnell: If we could have a little recess here, your Honor?

The Court: You may recess for ten minutes.

1995 (A recess was accordingly had, following which the following further proceedings were had:)

The Court: All right, Mr. McConnell.

Mr. McConnell: Q. Mr. Eckhardt, do you remember a conversation with Mr. Leo Salkin in 1928, in the early part of December, 1928, at the Edgewater Beach Hotel?

A. No, sir.

Q. Do you remember going to a hotel room with him and discussing the question of whether or not the Marbro and Granada Theatres could get film from the Fox Film Company?

A. Not in a hotel. We were selling, we had been selling Marx Brothers or whoever were their representatives for their theatres.

Q. You did not go up to a hotel room with him and discuss it?

A. I don't know if I did at that particular time. I can recall one evening in a hotel with him, with Mr. Grainger present, when we were endeavoring to sell them, we were endeavoring to sell them the terms, and that was the discussion.

Q. When was that?

A. Oh, that might have been that year, or maybe 1996 the year before.

Q. At the Edgewater Beach Hotel?

A. No, sir, at the Blackstone Hotel, that particular conversation.

Q. And who was there?

A. Now I never recall being in the Edgewater Beach Hotel. In fact, I know I was not. William Marx, Meyer Marx, and I don't know if—I cannot swear to it that Leo was there, although he may have been.

Q. Mr. Grainger and yourself?

A. Mr. Grainger was there, yes, sir.

Q. And they wanted, Marx Brothers and Mr. Salkin wanted product for the Granada and Marbro Theatres, didn't he?

A. And we sold it to him.

Q. For what year?

A. Whatever year was in question, from the time the Marbro and Granada opened up and on the occasion when we sold the four pictures away from them.

Q. Well, do you know what year this refers to?

A. I said it was—

Q. 1928?

1997 A. 1927, '28, well, maybe 1927, too, because we had sold our product to them prior to 1928, when the theatres opened.

Q. You had sold them the product, those four pictures, too, hadn't you?

A. A selection of pictures, yes, sir, a selected few.

Q. Did you tell Mr. Salkin they could not have product for the Granada and Marbro Theatres because Balaban & Katz had told your company that you could not sell it to them?

A. No, sir. We sold them product.

Mr. McConnell: I ask that that go out as not responsive to my question.

The Court: The latter part may go out.

Mr. McConnell: Q. Now, going back a moment to the Jackson Park Theatre, you testified yesterday that, based upon your experience, you felt that the Maryland Theatre was more advantageously located than the Jackson Park Theatre. Do you recall that testimony?

A. Yes, sir.

Q. What experience have you had in that neighborhood out there?

1998 A. I had the experience of selling the Jackson Park—all other theatres.

Q. I mean experience with the neighborhood itself.

A. In the selling them, yes, sir.

Q. Have you been out there and looked it over?

A. Oh, yes.

Q. Yet you don't know where the Crest Hotel is or the Southmoor?

Mr. Adcock: I object to that argument with the witness.

The Court: Objection sustained.

Mr. McConnell: Q. Well, the fact that there are two hotels within two or three blocks of the theatre is an indication of theatre patronage, is it not?

A. No, I would not say so.

Q. Would you think that that was a factor that would not enter into that determination?

A. Not in that instance, no, sir.

Q. Do you know how large the Southmoor Hotel is?

A. No, sir.

Q. Do you know how large the Crest Hotel is?

A. No, sir.

1999 Q. Don't you think it is material to know those facts before you decide on whether or not a given neighborhood is a good neighborhood?

A. Not necessarily.

2000 Q. Did you know that the Jackson Park had made about $30,000 worth of improvements in the year 1935?

A. No, sir.

Q. Do you recall a meeting on or about Monday, July 20, 1942, with a Mr. E. J. Mager and Mr. Richard Salkin about 11 o'clock a. m. at your office, 1260 South Wabash Avenue, Chicago?

A. No. I could not time a conversation or date or discussion.

Q. You don't recall that you had such a meeting on such a date?

A. No, sir.

Q. Do you recall a meeting at or about that time with those two gentlemen?

A. I still say I could not date it or time it. I have talked to them.

Mr. McConnell: That is all.

The Court: Any redirect?

Mr. Seeley: Yes, please.

Redirect Examination by Mr. Seeley.

Q. Mr. Eckhardt, is it only in the Loop that Fox licenses its pictures to play on percentage?

2001 A. No, sir.

Q. Is it only to Balaban & Katz and Warner Bros. that Fox licenses its pictures to play on percentage?

A. No, sir.

Q. Does it license pictures to play on percentage in independent theatres in Chicago?

A. Yes, sir.

Q. Does it attempt to license its pictures that way?

A. Yes, sir.

Q. In all runs?

A. Yes, sir.

Mr. Seeley: That is all.

Mr. O'Brien: I have just a couple of questions.

Recross Examination by Mr. O'Brien.

Q. Did you on occasion sell the Oriental and Palace first run in the Loop?

A. Yes, sir.

Q. At or about the time of the conversation which you told about at which Mr. Grainger was present, did you or your company sell the Granada and Marbro product?

A. Did we, sir?

2002 Q. Yes.

A. Yes, sir.

Mr. O'Brien: That is all.

The Court: I guess that is all, Mr. Eckhardt.

The Witness: Thank you, your Honor.

(Witness excused.)

The Court: Whom are you ready to proceed with now?

Mr. Adcock: I don't want to examine any others now.

Mr. McConnell: I can cross-examine Mr. Immerman, if he is here.

Mr. Adcock: Of course, he will be here all the time.

Mr. McConnell: I want to meet counsel's convenience. I don't want to throw anything out of gear.

The Court: How about Mr. Donohue?

Mr. McConnell: I have not read his testimony.

The Court: I suggest that we take our adjournment now. Can you read it in the meantime?

Mr. McConnell: I guess so.

The Court: That will leave us with the proposition that he wants to go home, and it will not disarrange things too much. We will adjourn until 2:40 o'clock. Make it 2003 2:15. I have a couple of little criminal matters that I want to dispose of.

(Whereupon an adjournment was taken to 2:10 o'clock p. m., Tuesday, February 29, 1944.)

2004 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption)

Before Igoe, J., and J.,

Tuesday, February 29, 1944
2:15 o'clock P. M.

Court met pursuant to noon recess.

Counsel present:

Mr. McConnell,
Mr. Korfist,
Mr. McConnell,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

(And thereupon the following proceedings were had out of the hearing and presence of the jury:)

2005 Mr. Seeley: Now, that both the reporters are here, I would like to have the record show I am returning the original affidavit of Leo Salkin, as part of the files in this court.

The Court: Do you want to do that in the presence of the reporters?

Mr. Seeley: Yes. The reporters took due note of the fact that I removed it.

The Court: Let them take due note of the fact that you are returning it.

Mr. Seeley: Thank you.

The Court: That is not an exhibit, is it?

Mr. Seeley: It was used for cross-examination, and

marked, that is, for identification. I doubt if it was ever introduced.

The Court: Mr. McConnell had it.

Mr. Seeley: I think he had it when I first saw it, yes sir.

The Court: It belongs in our files.

The Clerk: We will have to find who gave the receipt for it.

2006 (And thereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: Hand over to Mr. McConnell that affidavit that was in evidence here, Mr. Seeley is now returning. Do you want that put back in the files in the other cases, or do you want it in here?

Mr. McConnell: I guess we took it out. I guess we are responsible for it.

The Court: Then you better put it back where you got it.

Mr. McConnell: It is agreeable to opposing counsel that I go ahead with the cross-examination of Mr. Donohue, in view of the fact that he wants to leave town.

The Court: Where is he? All right, Mr. Donohue.

2007 JAMES J. DONOHUE, having been previously sworn, resumed the stand, was examined further and testified as follows:

Cross-Examination by Mr. McConnell.

Q. Mr. Donohue, how long did you say you had been in the film business here in Chicago?

A. About five and one-half years.

Q. Prior to that time you had been in other cities or other parts of the country?

A. That is correct.

Q. Now, your deal for film with Balaban & Katz, would that be what you would call an inter-company deal?

A. I suppose it could be termed that, but in so far as our negotiations were concerned, we dealt with them like we would deal with any other customer.

Q. Now, your Company owns what, 97 per cent of the stock of Balaban & Katz?

A. I believe that is correct.

Q. Did you hear Mr. Immerman testify, state that it was an inter-company deal?

A. I heard him make that statement, but that referred to the deals that we have made since the inception of the consent decree, or at least that was my interpretation 2008 of his remarks.

Q. Well, what was the situation prior to the consent decree; is there some difference now, with reference to your negotiations?

A. There is. Prior to the consent decree we dealt with Balaban & Katz in the same manner as we dealt with all other customers. Since the adoption of the consent decree we have set up a separate type of deal for wholly owned subsidiaries, or for partnership arrangements. In other words, we have partnership arrangements throughout the country.

Q. Now, what is that difference? It is not quite clear to me just what the difference is.

A. We set up what we call, for the particular theatres involved, a factor which is commonly called a key, based upon our previous film rentals that, for instance, B. & K. has paid us in proportion to our national gross, then that figure was increased by a certain percentage plus adding another very important picture to it, and whatever the total of that amount bore to the total amount of the film rental, that is the percentage they pay us on our releases. In other words, after a picture has been in release four or five weeks, or even shorter than that, we notify 2009 B. & K. that we expect that the picture will gross, nationally, a certain amount of money and they pay us the proportionate share.

Now, I do not know what the arrangement is with B. & K., but I know that with other partners, we looked at their overall result at the end of the season, and based upon that result we ofttimes secure additional film rental, if they have enjoyed a particularly profitable result.

Q. In other words, you are allotting them a certain—

A. Their share.

Q. (Continuing.) —average of what they should get of the national gross?

A. That is right.

Q. And that is what you would call really a percentage deal, straight percentage deal, isn't it?

A. In the final analysis it would probably wind up that

way, although there are other factors that must be taken into consideration, their operating overhead, every phase of theatre operation must be taken into consideration.

Q. Well, now, so far as your negotiations with Balaban & Katz concerning clearance and clearance schedules, 2010 and the release system, that takes place just the way it always had, doesn't it?

A. I did not quite understand your question, Mr. McConnell.

Mr. Adcock: What period of time does he refer to? I don't understand the question.

Mr. McConnell: Q. You do not understand the question, is that right?

A. That is correct.

Q. When do you negotiate the run and clearance of the Balaban & Katz theatres for the Paramount product?

A. During the years that I was here, the run and clearance was negotiated at the same time that we negotiated the agreement with respect to license fees.

Q. It was all part of the same negotiation?

A. That is part of the bargain of any contract in Chicago.

Q. And you made your negotiation for your license fees for the whole group of Balaban & Katz theatres at one time, isn't that the fact?

A. That was correct. Excuse me. There were a few exceptions. There were some half dozen houses that were not included in the deal.

2011 Q. And you did enter into written contracts for the different runs and the different clearance periods?

A. Yes.

Q. For each year?

A. That is correct.

Q. And you still do?

A. I imagine that we do, although—

Q. You are not here now, I beg your pardon.

A. That is right.

Q. You have gone down to Texas now?

A. That is right.

Q. So that your testimony here the other day was just with reference to the time that you were here?

A. That is correct.

Q. Now, you testified, as I recall from reading the

transcript, that you had stipulated admission prices for the different runs of the different theatres, is that correct?

A. I would honestly have to refer to our contracts to answer that question. I do not recall whether or not that was stipulated. It probably was in the clearance agreement. It was part and parcel of the entire negotiation.

Q. That was just part of your deal, and put in your 2012 clearance schedule, you think?

A. That is correct.

Q. Because you remember you testified for the different admission prices for the different runs, the Loop run—

A. That is right.

Q. (Continuing.) —was 75 cents?

A. That is right.

Q. And so on down the line?

A. That is right.

Q. And you testified, as I recall, that the purpose of that was to protect the given minimum admission price from encroachment of what you might call unfair competition, is that correct?

A. I believe my testimony was to the effect that the minimum prices were inserted into our contracts, as we commonly term them, into our contracts of sale or our license agreements, for the protection of ourselves and of all of our customers, both prior and subsequent run.

Q. Well, you testified that you have an interest in the runs, that is, you have an interest in the take at the box office of the run.

A. In all runs.

Q. So that if you did protect the run from the com-2013 petition of other theatres, you would protect yourself, would you not?

A. That is true, both with respect to the prior and with respect to the subsequent run. We do have an interest in all runs.

Q. Well, summing it up, the position is, as I understand from your testimony, that the minimum admission prices in the clearance schedules are to protect the Loop and on down the runs, from competition price, low priced theatres?

A. That is not my conception of it, nor do I believe it is my testimony.

I still say that we are interested in all runs, including the Loop run, and including the last run; and we insert minimum admission price provisions in all contracts, for

that purpose, to protect the subsequent run against unfair competition on the part of the prior run, and vice versa.

Q. All right. But it is to protect, as you say, against what you call unfair competition of price.

Mr. Adcock: I object, your Honor. I think he has answered it. That is substantially the same question.

The Court: Just read that question. You said to
2014 protect unfair competition.

Mr. McConnell: Protect against unfair competition.

The Court: That is not what you said.

Mr. McConnell: As to price.

The Court: What? Well, let us put the question again. I thought you said protect against unfair competition.

Mr. McConnell: I said the purpose—

The Court: Well, put the question again.

Mr. McConnell: Q. Well, the gist of your testimony is, as I understand it now, to get your position, that these provisions as to minimum admission prices are to protect the run against unfair competition as to price, is that your position?

A. Not only the run, to protect us, to protect our product.

Q. But also to protect the run?

A. Both prior and subsequent, and to protect all runs.

Q. Your testimony was that in all of this, and in your action, you were governed by the principle of making the most money possible for your Company in the given situation?

2015 A. I so testified.

Q. Now, you testified that a policy, a mixed policy, would not be a good thing. Can you define for us again what mixed policy is, so we will have it before us?

A. Well, my conception of a mixed policy, there are a few practical examples that I could refer to, but it is my conception that a mixed policy would be a policy whereby an exhibitor, for instance, would buy my product in C week, would buy a competitive product in first week, and another competitive product, possibly in B week, and would therefore, depending upon the pictures that he ran from any given distributors, his admission prices would vary according to the picture exhibited at the particular time, or during the particular week, all of which would lead to a lot of confusion on the part of his patrons, and I believe I testified that I consider it a very undesirable policy.

Q. Well, it would be an impossible policy, almost, wouldn't it?

A. Well, it wouldn't be impossible, but frankly I do not think it would be very practical.

Q. Well, I don't remember. Did you testify 2016 whether or not that was customary or not?

A. I testified that it was not customary.

Q. That the general, accepted way was all exhibitors license in the same week, is that the effect of your testimony, the gist of it? It is sort of garbled up, I will admit.

A. Well, I think what you mean is that an exhibitor generally negotiates, in all probability negotiates, if he buys my product in first week, he generally plays other product that same way, apparently.

Q. And you can know that by checking the play dates, can't you, on the pictures—

A. You know that—

Q. (Continuing.) —showing where they are playing?

A. (Continuing.) —from your newspapers.

Q. Yes.

A. That is right.

Q. Now, you said that if two theatres were licensed in the same week, they would be splitting the same patronage at the same admission prices.

Would that follow if these minimum admission schedules did not prevail?

Mr. Adcock: I think, your Honor, counsel—

The Witness: I did not make that—

2017 Mr. Adcock: Just a minute. I do not believe that that is what the witness testified to. I think there is one more element—

Mr. McConnell: Maybe I am not reading what he testified to.

Mr. Adcock: I think there is one element that you did not include, and that is where they were in competition, two theatres in close competition. I think that was the question.

Mr. McConnell: Well, let us ask the witness.

Q. Do you understand the question as it is now asked?

A. I do, with this, that my testimony was to the effect, in answer to a question, two theatres in close proximity to each other, if they played in the same week—

Mr. McConnell: I think you are absolutely right about that, and I will include that in my question.

Q. Do you understand the question with that in it?

A. No. I would like to have it repeated, please.

Mr. McConnell: All right.

Q. You testified, as I understand it, that two competing theatres, sharing a run or the same playing position, would have to split a given number of admissions, because theer would be one minimum admission price for both

2018 theatres.

Do you recall that testimony?

A. Two theatres competing closely, in close proximity to each other, that they were in close competition, would play in the same week, I testified that I felt that the patronage would be split, and that neither theatre would operate as successfully as if one theatre played, enjoyed a prior run and one a subsequent run.

Q. But that is based on the assumption that they can not compete as to price, is it not?

A. Well, that would be up to the exhibitor. Our minimum admission provisions are only with respect to minimums. We have many theatres operating in Chicago that charge substantially in excess of the minimum specified in their license agreement.

Mr. McConnell: Well, I ask that that part go out about what many theatres charge in excess of the minimum admission prices, as not responsive to the question.

Mr. Adcock: I think that is responsive, your Honor.

The Court: I think that may stand.

Mr. Adcock: As the answer, as part of the answer.

The Court: Something about the ultimate result

2019 being due to the fact that minimum prices were fixed, and he went ahead to explain that that was not the reason, because in many cases the minimum price is not charged, but they charge in excess of the minimum price.

Mr. McConnell: Q. Now, in your negotiations for the clearance schedules, how are those negotiations carried on: are they carried on by oral conversation or by correspondence, or what is the method of negotiation?

A. It is across the table discussion.

Q. And in those across the table discussions who have you discussed the matter with for Balaban & Katz?

A. With Walter Immerman and Abe Kaufman, and subsequently with Joe Kaufman.

Q. And when you have your discussions, do you have

data before you to which to refer in drafting the new clearance schedule?

A. You do.

Q. You usually have before you the last clearance schedule, do you not, for the year before, the season before the season you are then negotiating?

A. That would be the general—I would say yes, that would probably be the principal document.

2020 Q. And in the usual course you knew the document would follow the terms of the old, would it not?

A. Well, there could be changes.

Q. There could be, but—

A. And there was changes.

I am sure that if the documents over the period of five years were compared, that there would be changes noted.

Q. Well, let us compare a couple.

I will show you plaintiffs' Exhibits 68 and 69; and ask you to point out what changes were made in those two documents?

A. Well, these are rather long documents, Mr. McConnell. I—

Mr. McConnell: All right. I think your point is well taken. Just glance through them and see if you can see any important changes in the main runs.

I will tell you, Mr. Donohue, I do not want to press you for an answer on it. If you find any changes, you can note them in the record, if that is all right. I just do not want to take the time. He has to go through all that minutae of the contracts.

Mr. Adcock: The documents, I think, are in evidence.

2021 Mr. McConnell: Yes.

Mr. Adcock: You offered them.

Mr. McConnell: I have no further questioning of this witness.

The Court: Very well. Any re-direct?

Mr. Adcock: No, I haven't any.

The Court: Mr. Seeley?

Mr. Seeley: No. Thank you, sir.

The Court: How about brother O'Brien, have you any questions to put to this gentleman?

Mr. O'Brien: I have no cross.

The Court: Nobody wants to use you, Mr. Donohue. You may step aside.

(Witness excused.)

The Court: Who is next, Mr. Immerman?

Mr. Adcock: Could cross-examine Mr. Immerman?

The Court: Do you want to cross-examine him now, or do you want let them put some other witness on?

Mr. McConnell: Well, I have about all I can take today.

The Court: All right.

Mr. Goldberg: We will call Mr. Quigley to the stand.

The Court: Mr. Who?

Mr. Goldberg: Quigley.

2022 The Court: Mr. Quigley.

Mr. Segley: Did you mean, Mr. McConnell, you would like to adjourn?

Mr. McConnell: No, I don't mean that.

Mr. Goldberg: I didn't understand he meant that.

Mr. Adcock: I didn't understand that.

2023 JOHN P. QUIGLEY, a witness called on behalf of the defendants Paramount Pictures, Inc., and Balaban & Katz Corporation, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Goldberg.

Q. Will you state your name, please?

A. John P. Quigley.

Q. Where do you live, Mr. Quigley?

A. 7352 Coles Avenue.

Q. In the city of Chicago?

A. Chicago.

Q. And what is your business?

A. Real estate, brokerage, sales, management.

Q. What is your business address?

A. 2221 East 71st Street.

Q. And how long have you been engaged in the real estate business at that address?

A. At that address since 1927.

Q. You have been engaged in the same type of business during that entire period?

A. Yes.

Q. Near what north and south street is your office?

A. Paxton Avenue to the west, and Luella to the

2024 east.

Q. And could you describe the nature of your business in a little more detail, what kind of work you do?

A. Well, I sell and manage properties, and also write some insurance.

Q. Do you do any appraisal work?

A. Yes, I do.

Q. Have you done very much of that?

A. I have—I was on the Appraisal Committee for the Chicago Real Estate Board for two years, and in that period we probably appraised, oh, two to five million dollars worth of property, of which I was a part of the Appraisal Committee. And you said you have been in business at that address since 1927?

A. Yes.

Q. And what did you do prior to 1927?

A. Well, I put my real estate schooling in at 71st and Stony Island avenue, and at 71st and Jeffery Avenue.

Q. With what concerns?

A. I started—what is that?

Q. With what concerns?

A. Oh, D. E. Mulvey, at 71st and Stony Island avenue, and George C. Bour & Company, at 71st and Jeffery.

2025 Q. Can you state the approximate years and the length of time that you were with each of those two companies?

A. Well, I was with Mulvey only about four months. Then I switched over to the Bour office at 71st and Jeffery, and was there approximately six years.

Q. And both of those concerns are in what business?

A. Both were in the real estate business.

Q. Both in the real estate business?

A. Yes.

Q. Have you made a survey of the locations of certain theatres on the south side of Chicago?

A. I have.

Q. At whose request did you make that survey?

A. At your request.

Q. Will you give us the names of the theatres whose locations you surveyed?

A. The Jeffery, the Jackson Park, the Tower, Maryland, Tivoli, Grove, and the Shore. I don't know whether there is one more or not. I think that is all. I think there was the seven.

Q. You mentioned the Jackson Park as one?

A. Yes.
Q. The Tivoli was one?
A. Yes.
Q. Was the Tower one?
2026 A. Yes.
Q. And the Maryland?
A. Maryland.
Q. And the Jeffery?
A. Jeffery.
Q. And the Grove?
A. Grove.
Q. And the Shore?
A. And the Shore.
Q. And the Avalon?
A. And the Avalon.

Q. Will you describe the development of the business location in the vicinity where the Jackson Park Theatre is located, namely, 67th and Stony Island avenue?

A. Yes. That is part of the South Shore district, and the South Shore district was annexed to Chicago in 1889. About four years after, the sewer was put into, in Stony Island avenue.

Well, right after the Fair of '93, the district really started to progress, and a great many homes, frame, frame and brick and stores, offices, and homes were built.

Well, things went along until about 1915 to 1925, things were developing in earnest there, and a great many of the old buildings gave way to the newer type.

In the two blocks, that is, from 67th to 69th on Stony Island avenue. However, from 69th to 71st, a great
2027 many of the old frame buildings still stand.

From 1915 to 1925 these stores, stores and offices, and a couple of hotels were built in that district, along with a theatre.

Well, as the South Shore progressed, the 67th street location, that is the Stony Island location on 67th street, developed rapidly, and with a good class of merchants; and it was at that time that it was necessary for the people of the South Shore, it was not necessary, but they found it most convenient, to do their shopping at the Stony Island location, and also attended the Jackson Park Theatre.

That was short-lived, however, because as Seventy-first Street developed, the merchants found their patrons dealing on 71st street.

Mr. McConnell: Just a minute, now.

The Witness: Any number of

Mr. McConnell: Is this witness testifying from personal knowledge, or as an expert, or what?

Mr. Goldberg: This witness has testified that he has been engaged in the real estate business on the south side of Chicago during this entire period.

Mr. McConnell: He is talking now about what
2028 people are doing in the shopping districts back in 1915 and '16. I do not see any basis for that testimony.

Mr. Goldberg: The witness has already testified that he has made a study of the location, and the history of these locations.

Mr. McConnell: Well, I would like to cross-examine him on what study he has made before he goes into what the people were doing.

The Court: Do you want to cross-examine as to his qualifications?

Mr. McConnell: Yes, I would.

The Court: All right, proceed.

2029 *Preliminary Cross-Examination by Mr. McConnell.*

Q. What schooling have you had, Mr. Quigley?

A. High school.

Q. Have you ever attended any college?

A. No.

Q. Have you ever attended any trade or occupational school of any kind?

A. No, I have not.

Q. After high school you started in what business?

A. Well, after high school I started in the real estate business up at Green Bay.

Q. Wisconsin?

A. Yes.

Q. And how long were you up there?

A. I was there until about 1914, and came to Chicago and sold cigars, and then went into the steel mills. When I left the steel mills in 1921 I was superintendent of—not superintendent, I was the equivalent of a superintendent, a mill foreman in two plate mills at the Illinois Steel Company. I lived in the South Shore district all this time.

Q. Is that out in Gary?

A. No, South Chicago.

Q. Whereabouts did you live in the South Shore district?

2030 A. I lived at 74th, on 74th Street between Coles avenue and South Shore Drive; also on Chappell avenue in the 7500 block, and on 78th Street between the Drive and the Lake.

Q. Now, what research have you done on this matter so far as the shopping districts are concerned?

A. Well, my research has been done and pertains to recent years. My knowledge, however, of the shopping on 67th Street dates back to 1914, because I lived in the district all that time. Now,—

Q. You are testifying on that branch of the case from your memory?

A. Yes.

Q. Now, what research have you done?

A. I haven't any research for—dating back to 1915 to '25.

Q. You have made no research about that at all; that is just your recollection?

A. I know that that is when the district was built up there between 67th and 69th streets.

Q. Now, but you can give me an answer to the question. Now, what research did you make about that?

Mr. Goldberg: I think the witness has testified that he made no research about historical factors.

2031 Mr. McConnell: All right; if that is the answer.

Mr. Goldberg: He is relying on his own knowledge and memory.

Mr. McConnell: Q. Now, what research did you make about any branch of the case?

A. Well, do you mean covering recent years, or back—

Q. Well, start when you began your research, that is what I want to find out, is when you began your research?

A. Well, in the last couple of weeks we made a research of all the business districts in the district here, and compared it.

Q. All right. You say "we". Who is "we"?

A. Well, Kuehnle and myself principally.

A. And you made that research at the request of counsel here, is that it?

A. Yes.

Q. So that your research has come since you were retained in this case, is that right?

A. Yes.

Q. Now, what research did you do?

A. Well, we made comparisons of the different districts, and checked rentals in the district, made comparisons
2032 as to the types of stores, and compared the different stores of Stony Island Avenue with those of 63rd Street, and 71st street, and went quite thoroughly into the rental values of them.

Q. Where did you get the values, where did you get the data?

A. Got the values from offices, ownerships, and some we looked at the books, and got them right off the books.

Q. What books?

A. Out of rental books in management offices.

Q. In your office?

A. And also under a trust deed. Some we received from owners, and we also checked with some, a great many of them with tenants.

Q. Aside from that you have made no research?

A. Aside from that, no.

Mr. McConnell: All right.

Mr. Goldberg: Are you withdrawing your objection, Mr. McConnell?

Mr. McConnell: Yes. I think it is clear what the witness has testified from.

Mr. Goldberg: Your Honor, I wonder if I might have a minute or two to set up that map that we used yes-
2033 terday. I didn't realize this witness would be put on this early.

The Court: Yes.

2034 *Direct Examination (Cont'd) by Mr. Goldberg.*

Q. Will you please continue the answer that you were making, Mr. Quigley?

A. Yes. I made a statement that as 71st street developed, Stony Island avenue suffered, and it was quite clear that Stony Island could not develop any farther because of the Jackson Park on the northeast and the cemetery just a short way west. I do not think it is very probable that either one of those will be subdivided; and it was natural that the development, with the development of 71st street, that it would pull the South Shore people towards 71st street to do their shopping, because it was nearer, and it was developing with better stores.

Now, I think that the popularity of 71st street can be borne out by one thing, and that, I think, kind of stands out. There is a store at the corner of 67th street—

Mr. McConnell: Is this a question? Is there a question before this witness that is calling for this?

Mr. Goldberg: The question before the witness was to describe the history and nature of the location at 2035 67th and Stony Island avenue.

Mr. McConnell: Well, now he is trying to convince us by an argument as to the popularity of something. He is not describing anything.

Mr. Goldberg: Q. Are you through with your description of the history and location—

Mr. McConnell: I object to that as not responsive to the question.

Mr. Goldberg: I will agree that the comment at this time with respect to the store rental may be stricken.

Mr. Adcock: If the Court please, I want to make this suggestion.

The Court: All right.

Mr. Adcock: The objection as not being responsive can not come from anybody but the questioner, and if the thing that is said is material and relevant, then that is sufficient.

The Court: That is one of the few objections only the man asking the question can make.

Mr. Adcock: That is right.

The Court: I found that out to my sorrow. Now, let us get started on a question.

Mr. Goldberg: Q. Mr. Quigley, will you tell us 2036 about the character and history of the 71st street location, where the Jeffery Theatre is located?

A. Well, 71st street was practically undeveloped. I say practically so because there were a few stores on 71st street before the year 1923, but before that, the common traffic east and west was by 70th street, and 72nd street, because 71st street was not paved, and it was almost impassable.

In 1923, 71st street received its sewer, and paving followed immediately thereafter.

Well, as the paving was completed, 71st street developed, and developed very, very rapidly, and of course it attracted the people from the South Shore to do their shopping on 71st street; and not only that, but we got a great many people from other points than 71st street than the vicinity of 71st street, because of our superior stores there.

We have developed with a high caliber of stores in there. Now, one of the things, for instance, we attract women on 71st street, because we have 24 stores for women there against the Stony Island avenue six stores in two blocks, and I think you will find that it is a very healthy con-
2037 dition when you have a great many women's stores on any street, on any of the streets.

The Court: Healthy, from what standpoint?

A. From a business standpoint. It brings people to the street, and where people do their shopping—

The Court: It does not add very much to the health of the husband.

A. (Continuing)—and 71st street has two quite modern theatres. It has a big recreation building, and without a question, this recreation building keeps people at and nearer 71st street, instead of going out of the district for those recreation purposes, for the recreation purposes that they can enjoy here.

Another thing is that the Y. M. C. A. just purchased, just a month ago, purchased a large tract of land on 71st street, just two blocks from the Theatre, to develop with housing and recreation, for housing and recreation facilities.

Since 1935 there were thirty-six new stores built on 71st street.

Now, adjoining 71st street, both to the north and to the south, is a very heavily populated district. I could point it out with that other map here, that does not show pop-
2038 ulation, but we have a very thickly populated district north of 71st street, and south of 71st street as well. It is spotty, but quite densely populated, and the great majority of our people in the district are within walking distance of the Jackson Park and the Hamilton Theatres, and both of them are quite modern theatres.

Mr. Goldberg: Q. Mr. Quigley, you stated, I believe, the number of new stores that have been built on 71st street since 1935?

A. Yes.

Q. How many stores is that?

A. 36.

Mr. O'Brien: May I have that last answer read, please?

The Witness: What?

Mr. Goldberg: No. The court reporter will read the last answer.

(Record read.)

The Court: Q. What map do you mean?

A. I meant that map that was set up there didn't show.

Mr. O'Brien: You did not listen to the reading of the answer, did you?

The Witness: Now, this is the vicinity of the Jeffery Theatre right here (indicating on map), and the red, Tivoli red inked blocks there indicate population.

2039 Mr. O'Brien: Mr. Witness, if I may interrupt, the reason I was having the answer read, is your answer says "Jackson Park", and I do not understand what you are talking about.

Did you mean the Jackson Park, or are you talking of the Jeffery?

The Witness: I mean the Jeffery Theatre, yes. I mean the Jeffery Theatre.

This is something new to me, this being a witness in the trial of this kind, so—

The Court: You are getting along pretty well.

The Witness: Maybe I have made a few mistakes.

Mr. McConnell: Well, this is something new to me, your Honor, to have the witness give a little lecture on the map, and everything else that is not in evidence.

Mr. Seeley: I object to that comment, and ask that it be stricken.

The Court: What is the comment?

Mr. Seeley: If he thinks there is anything improper, let him object.

Mr. McConnell: I object to the witness taking a document which is not in evidence, and lecturing the jury on it in this manner.

The Court: Now, let us take one thing at a time.

2040 The document is not in evidence. Do you object to his use of it for that reason?

Mr. McConnell: Yes, your Honor.

Mr. Goldberg: May I ask a few questions before the witness uses the map any further?

The Court: Relative to the map?

Mr. Goldberg: Yes.

The Court: Yes.

Mr. Goldberg: Mr. Reporter, I would like to have you mark that map as Paramount B. & K. Exhibit 6 for identification.

(Thereupon said map was marked Paramount B. & K. Exhibit 6 for identification.)

2041 Q. Mr. Quigley, I will ask you to look at the map which is before you, which has been identified as B&K. Paramount Exhibit number 6, and ask you what that map purports to show.

Mr. McConnell: I object to that, as to what it purports to show. He can testify first as to how he prepared it and who prepared it.

The Court: Isn't he allowed to say what the document purports to show?

Mr. Goldberg: I expect to ask him the source of the information.

The Court: What does that exhibit in front of you purport to show?

The Witness: This is a map that has been gotten up by the Chicago Plan Commission and it shows the different districts here that we have had under investigation, and we have them marked out here, such as this one here is recognized as the Woodlawn District, and then the South Shore District here (indicating on map), and then we also take in another section down here in the Grand Crossing District.

Does that answer your question?

Mr. Goldberg: The source of that information is
2042 the map prepared by the Chicago Plan Commission?

A. The Chicago Plan Commission.

Q. Do you know who prepared that map actually? I mean who got the pages out of the Chicago Plan Commission map?

A. Walter Kuehnle.

Q. And have you seen the book issued by Chicago Plan Commission which contains these pages from which this map was made?

A. I have.

Q. And this is an exact copy of those pages?

A. An exact copy.

Mr. Goldberg: I will offer the map in evidence which has been marked as B.&K. Paramount Exhibit 6.

The Court: Any objection?

Mr. McConnell: I object to it not sufficient foundation for it.

The Court: The objection is overruled. It may be admitted.

(Said map, so admitted in evidence, was marked B&K PARAMOUNT EXHIBIT 6, and is as follows.)

2043 The Witness: Well, I—

The Court: Wait until they ask you a question.

Mr. Goldberg: Q. Mr. Quigley, the last question was as to the number of new stores which have been built on 71st Street since 1935, and you have answered that, I believe. May I have your answer again?

A. Thirty-six.

Q. And since that time, how many new stores have been built in the shopping district in the vicinity of 67th Street and Stony Island Avenue where the Jackson Park Theatre is located?

A. None.

Q. Now, have you completed your answer with respect to my question as to the history and development and character of the present location of 71st Street in the vicinity of the Jeffery Theatre?

A. No, I have not, because I wanted to go into this development of South Shore here and show why that 71st Street has developed into one of the recognized, one of the best recognized business districts on the south side. We have tremendous populations from 67th Street to—

Mr. McConnell: I object to that. He asked a
2044 question to which he should answer "No," and we have a lecture here from the witness.

The Court: How could he answer "no"? He said, "Have you completed your answer?" And he said, "No." Now he is going ahead to complete his answer. That is the way I understand it.

Mr. Goldberg: That is it exactly.

The Witness: What do I do, start over again?

The Court: No, you don't start over again. Start just where you left off.

The Witness: We are making a comparison between 71st Street and Stony Island Avenue, the business district which we are recognizing as about two blocks, from 67th to 69th Street. Now 71st Street has a well-developed business district from this point to South Shore Drive. In other words, there are 13 blocks of highly developed business blocks here against two on Stoney Island Avenue, and it is natural that if these people are going to shop over up here on 71st Street that they are also going to attend their theatres along here.

They go to the churches, the principal churches in the district. I mean the large churches. I won't say the

principal churches, because a lot of the small ones
2045 are principal to certain people, but the larger churches are immediately adjacent to 71st Street, and, by the way, South Shore has 15 Protestant churches, two Catholic and two Jewish synagogues.

Q. Are you through, sir?

A. I think I have covered the territory here quite well.

Q. Mr. Quigley, will you describe the character of the location at 63rd Street on which the Tower and Maryland Theatres are located and in the vicinity of which the Tivoli Theatre is located?

A. Yes, I would. The Tower, Maryland and Tivoli locations are right approximately here, here (indicating), and the Tower over here (indicating on map).

Q. Will you please state the approximate corners or approximate addresses of those theatres, instead of using the expression "here"?

A. Well, the Tivoli is approximately 6321 or 25 Cottage Grove. The Tower is at Maryland on 63rd Street.

The Court: The Tower?

The Witness: No, I mean the Maryland Theatre.
2046 And the Tower is near Blackstone and Harper on 63rd Street.

Mr. Goldberg: Yes. Go ahead.

The Witness: Now this is commonly recognized as the Woodlawn Community and this is 63rd Street. Sixty-Third Street is and has been for a great many years a very prominent and progressive business district. The residents of this community do their shopping on 63rd Street and also attend the theatres in the nearby community. It is a great district for amusement and for recreation. Besides the theatres along 63rd Street there are such amusements as a ballroom. There are two ballrooms on Cottage Grove Avenue; right off of 63rd Street there is one of the finest ballrooms in the world, the Trianon. Well, by having good business and the recreations all by itself, it enables those people to do their shopping at home and also spend their recreation moments at home. Sixty-Third Street here (indicating) from this point here is recognized as one of the high volume districts here and very comparable,—not by any comparison with 63rd and Halsted, but right next to it in dollar volume, and 63rd Street is developed with high class stores as well as those

of the medium class. A great many of the 63rd
2047 Street stores have been done over and have been made very attractive,—a great many of them carry what might be thought astonishing rentals, because of the volume of business they do. I have some information here with me that brings that out.

Q. Mr. Quigley, are you familiar with the average rentals paid for comparable space on 63rd Street, in the vicinity of the Tivoli, Tower and Maryland Theatres, and at 67th and Stony Island Avenue, at approximately the location of the Jackson Park Theatre? Are you familiar with the average rentals paid for comparable space in those two locations?

A. Yes. If the—

Mr. Goldberg: Just a minute before you go any further.

Q. What is the comparison? Which one of those locations has the higher average rental?

A. Sixty-Third Street.

Q. And approximately how much higher are comparable space?

A. Oh, approximately thirty per cent. There are some locations, however, on 63rd Street, that ran 200 per cent more.

Q. More than—

2048 A. Than any place on 67th Street.

Q. And do you have any knowledge as to the comparative rentals for comparable space for store space on 71st Street, in the vicinity of the Jeffery Theatre and the Stony Island Avenue location at 67th Street at which the Jackson Park Theatre is located?

A. I have. I would like to make a comparison there.

Q. Well, in general terms, would you tell me which one has the higher rentals for comparable space?

A. 71st Street.

Q. And approximately how much higher?

A. Thirty to fifty per cent, depending on which stores they are. Some of them run over that.

Q. Now, Mr. Quigley, based on your experience and the investigations that you have made, do you have an opinion as to whether the business location at 67th and Stony Island Avenue, or rather Stony Island Avenue in the vicinity of 67th Street is superior or inferior in location to the business district on 63rd Street?

A. It is much inferior.

Q. Well, will you answer please, first, if you have an opinion?

A. I have.

2049 Q. Do you have an opinion?

A. I have.

Mr. McConnell: Now I object to the opinion.

The Witness: It is inferior.

The Court: The objection is overruled.

Mr. Goldberg: Q. Will you say which is inferior to which?

A. 67th and Stony Island is inferior to either 63rd Street or 71st Street.

Mr. Goldberg: That is all.

The Court: Suppose we take a recess for about ten minutes.

(A short recess was taken, after which the following further proceedings were had herein:)

The Court: Step up here, Mr. Quigley, please.

Mr. Seeley: Mr. McConnell, would you like the maps put back where they were or not?

Mr. McConnell: No, I don't care about them.

The Court: Are you ready for cross-examination?

Mr. McConnell: Yes, your Honor.

The Court: All right, proceed.

2050 *Cross Examination by Mr. McConnell.*

Q. Mr. Quigley, are you being paid for this research?

A. I hope to be.

Q. And examination and so forth?

A. I hope to be.

Q. And by whom?

A. I don't know. Mr. Goldman asked me to do this work.

Q. And for whom?

A. What is it?

Q. Did he tell you who he represented?

A. No, he told me the name of the case, but not who I represented, no.

Q. You don't know who his client is?

A. Yes, some of the big theatre outfits and movie people.

Q. Well, who are they?

A. I don't know.

Q. Don't you know who owns these theatres?

A. Balaban & Katz, Warner Bros., and I don't know who the others are.

Q. You understand they are going to pay you?

A. Yes, sir.

2051 Q. For your time and whatever research you have done?

A. Yes. There has been nothing said about pay so far, but I don't expect to do it for nothing.

Q. And for your time here in court, I assume?

A. I expect to be.

Q. Were you told what you were told to establish in the way of proof in the case?

A. Sir?

Q. Were you told what you were to establish by your research?

A. No. No, I was not. I was asked to give—to be prepared to give my opinion as to real estate values, rentals, and tell about the different locations that I was familiar about.

Q. Well, were you given some direction of any kind with which to start your research?

A. Yes. He told me that he was going to call me to testify as to the comparisons between 67th Street, 71st Street and 63rd Street.

Q. And did he ask you to direct your research towards that issue?

A. Yes.

Q. Now this map and these papers which you have
2052 pasted on the map, where did you procure them?

A. From the Chicago Plan Commission. They are in regular book form.

Q. You did not have anything to do with the preparation of them yourself?

A. No.

Q. And you say you cut them out of a book?

A. No, I didn't say I cut them out. I told you that Walter Kuehnle cut them out and pasted them.

Q. What book?

A. On the Chicago Plan Commission books. There are two volumes in the Chicago Plan Commission and one book will cover this district and the other books will cover other districts.

Q. And your procedure was simply to take those books and cut certain pages out of that, is that it?

A. Yes, sir, and make a map out of that.

Q. Who is Walter Kuehnle?

A. Well, Walter Kuehnle is a Chicago appraiser. He is also chairman of the Appraisal Committee of the Chicago Real Estate Board at the present time.

Q. Was he retained along with you to make this research?

A. Yes.

Q. By Mr. Goldberg?

A. Yes.

2053 Q. And you worked together on it, is that it?

A. Yes.

Q. You nod your head. Is that yes?

A. I said yes.

Q. What period of time do you purport to show the population changes?

A. The population changes, you mean, from Stony Island Avenue to—

Mr. McConnell: Yes.

The Witness: Well, that took place from—principally from 1921 up until 1928, when building stopped. Building was very rapid in South Shore during that period.

Q. By 1928 it was built up, is that it?

A. Well, building stopped in 1928.

Q. Well, did it stop because it was built up or did it stop because of the depression at that time?

A. Because of the depression and being over—the apartments being overbuilt in the city of Chicago, not only in the South Shore District, but all over.

Q. Where is the Southmoor Hotel with reference to the Jackson Park Theatre?

A. Well, it is on the northwest corner of 67th and Stony Island, about 200 feet from the theatre, I would 2054 judge, approximately.

Q. How large a hotel is that?

A. Five hundred and twenty-eight operating rooms. It is listed in the register as 600 rooms.

Q. Are there some stores in that building?

A. There are.

Q. What are they?

A. One is a Walgreen Drug Store. That is on the corner. There is a woman's shop and a barber shop. Then

on the 67th Street side I think there is a real estate office in the buiding. I am quite sure I am right about the real estate store being in that building, and if it is not in the building it is immediately adjacent to it.

Q. What other stores? Any other stores?

A. Yes, there is a tavern on 67th.

Q. Is that part of the hotel,—run by the hotel?

A. I could not tell you who is running it.

Q. All right. Now, how about the Crest Hotel? Where is that located?

A. That is on the northwest corner of 68th and Stony.

Q. Just about a half block away from the theatre, the Jackson Park Theatre?

A. Yes, and across the street.

Q. Right across the street. How many rooms in
2055 that hotel?

A. It is listed as a 200 rooms.

Q. It is full, isn't it?

A. I don't know. I expect it is. Practically all hotels are filled now.

Q. Did you make any research to determine?

A. Whether it was full or not?

Q. Yes.

A. No.

Q. Make any research to determine whether the Southmoor was full?

A. No.

Q. That part of the research you were not interested in, is that it?

A. I did not think it was necessary.

Q. Now what other—what stores are in the Crest Hotel?

A. Can I refer to my notes on that?

Mr. McConnell: Yes, if you care to refer to something.

The Witness: Well, there is a gents' furnishing store, a tavern, a restaurant, a liquor store. I think that's all.

Q. Is there a bowling alley there?

A. Yes.

2056 Q. Is it in operation?

A. Yes.

Q. How large an alley is it?

A. I think it is 22 alleys.

Q. Is there a store called the Dutch Mill there?

A. Yes, on the corner, on the corner of 68th.

Q. What transportation is there there at the Jackson Park corner?

A. The Stony Island street car and 67th Street street car.

Q. Sort of a junction, isn't it, of two lines?

A. Yes.

Q. How far away is the Illinois Central?

A. About half a mile west.

Q. Do you think it is that far?

A. Close to it. If not a half mile probably, oh, five-eighths of a mile.

Q. Is there a bus stop there?

A. Yes.

Q. What bus line?

A. The Greyhound.

Q. How far is it from the elevated?

A. Four blocks.

Q. What station on the elevated?

2057 A. Stony Island station.

Q. The Jackson Park Theatre was the first theatre built in that neighborhood, wasn't it?

A. No. There was a theatre on Stony Island Avenue before the Jackson Park.

Q. Well, was it the first theatre of around or over 1000 seats built in the neighborhood?

A. I think it was.

Q. It was the first large theatre built on the south side, wasn't it?

A. That I could not say.

Q. Do you know who the builder of that theatre was, the Jackson Park?

A. I think it was Ed Bloom, Edward I. Bloom.

Q. He built a lot of property in that district, didn't he?

A. A lot of it. A lot of it.

Q. He built the Southmoor Hotel?

A. I thought that Ike Gettler built the Southmoor Hotel, but I think that Ed Bloom had something to do with it.

Q. He built the Crest Hotel, didn't he?

A. Yes, he built the Crest.

Q. Now the Maryland Theatre is located under 2058 the elevated tracks, isn't it? The tracks run right in front of the theatre?

A. Right in front of the theatre, yes. It is not located under it.

Q. The street is darkened, isn't it, by the elevated tracks?

A. Well, there are many lights there of the theatre that break the darkness.

Q. It is darkened, though, isn't it?

A. I would not say it is darkened.

Q. You think it is as light as the street on which the Jackson Park Theatre is located?

A. If the lights were out, no. I mean if the front lights were out, no.

Q. In the daytime it is not?

A. The lights are on there in the daytime at the Maryland.

Q. What would you say was a description of that district? Is there a district there in which the Jackson Park Theatre is located that has some designation of some kind?

A. Well, it is on the fringe of the South Shore District. It is neither in Woodlawn nor—well, it is in South Shore, yes.

2059 Q. Where do you get the term "South Shore?"

A. Well, because of the boundaries: the common accepted boundaries of South Shore run from 67th Street to 79th Street, and Dorchester Avenue to the lake. Those are commonly known boundaries.

Q. Well, who gave it that term? Is that your term or is that a commonly accepted term?

A. Well, our chamber of commerce in the neighborhood accepts that as the boundary of our district, the South Shore Chamber of Commerce, for one thing. You will find that the Chicago Plan Commission and the different people have accepted districts of that kind, and that is approximately the same district as you will find in most of these fact books.

Q. And the Woodlawn District is what, you say?

A. From 60th Street to 67th Street, South Park Avenue to Stony Island Avenue. Then there is also a little triangle south of 67th Street running alongside of the cemetery there that has been accepted as the Woodlawn District. I could point that out on the map if you would like to have me do so.

Q. Well, now, if you put all those districts together in one district, would you say that the Jackson Park was

2060 in the center of the combined district?

A. No, I would not, because the 67th Street location is so cut off with Jackson Park.

Q. Well, I am assuming now that you are overlooking that for the moment, and, putting the districts together, if you put the districts together into one zone, geographically the Jackson Park Theatre would be about in the center of it, wouldn't it?

A. Not center in population.

Q. No, I am not talking about population, I am talking about geographically.

A. Geographically, yes, I would say that it is.

Q. In that zone?

A. Yes.

Mr. McConnell: That is all.

Mr. Goldberg: I have a few more questions, please.

2061 *Redirect Examination by Mr. Goldberg.*

Q. You mentioned, Mr. Quigley, two hotels that are in the vicinity of the Jackson Park Theatre. Are there any hotels in the vicinity of the 63rd Street shopping district?

A. Oh, yes.

Q. Will you give me the names of them, please?

A. Well, there is the Hayes—

Mr. McConnell: I object to this as not proper redirect. It is something he could have gotten on direct examination.

Mr. Goldberg: Your Honor, the hotel question was brought up the first time by Mr. McConnell.

Mr. McConnell: I asked him for a description of the Jackson Park district.

The Court: The objection is overruled. He may answer.

The Witness: A. The Hayes, Plaisance, Pershing, and the Wedgewood are the principal hotels.

Mr. Goldberg: Q. How many rooms have they?

A. The Hayes, 400; the Plaisance, 275; the Pershing, 225; and the Wedgewood, 200.

Q. Are there any hotels in the vicinity of the 71st Street business district?

2062 A. Yes; the South Shore View with 342 rooms, and the Country Club Apartments with 320 rooms.

Q. Is there another Country Club located in the vicinity of the 71st Street business district?

A. Yes, the South Shore Country Club, that joins the 71st Street business district.

Q. You referred to bowling alleys in the vicinity of the Jackson Park Theatre. Is there any bowling alley in the vicinity of the Jeffery Theatre?

A. Yes, about 200 feet east.

Q. How many alleys?

A. Thirty-two.

Q. Outside of the size, what is the comparison between the bowling alleys on Stony Island, and the one on 71st Street, with respect to appointments and modernity?

A. The 71st Street alleys are more modern, newer.

Q. What is the transportation in the vicinity of the Maryland Theatre?

A. The Cottage Grove car—

Q. Pardon me, how far is that?

A. That is about a block west of the Maryland Theatre, a block and a half.

Q. Yes, sir.

A. Then the 63rd Street car—

2063 Q. How close is the closest stop of the 63rd Street car to the Maryland Theatre?

A. About 100 feet.

Q. All right. Go ahead.

A. Then the elevated at the station at Cottage Grove.

Q. How far is that from the Maryland Theatre?

A. About a block and a half.

Q. Does the Illinois Central have a stop on 63rd Street?

A. Yes. It is about three-quarters of a mile from the Maryland Theatre.

Q. Now, you referred to the South Shore district. Where is the Jeffery Theatre with respect to the South Shore district? In what part of the South Shore district is the Jeffery Theatre located?

A. The 71st Street district is centrally located as to population for the people of South Shore.

Q. You also referred to the Jackson Park Theatre being at the end of the Woodlawn district. Where is the Maryland Theatre with respect to the Woodlawn district? In what part of the Woodlawn district is the Maryland Theatre located?

2064 A. The Maryland Theatre is quite centrally located for the Woodlawn district.

Mr. Goldberg: I think that is all.

Mr. McConnell: No further questions.

The Court: All right. I guess that is all, Mr. Quigley.

(Witness excused.)

Mr. Goldberg: I will call Mr. Kuehnle.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume I of the printed record, filed in this Court on the fourteenth day of February, 1945, in:

Cause No. 8716.

Florence Bigelow, *et al.*,
Plaintiffs-Appellees,
vs.
RKO Radio Pictures, Inc., a Corporation, *et al.*,
Defendants-Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 6th day of September, A. D. 1945.

(signed) Kenneth J. Carrick
(seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*